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CERTIFICATION UNIT

Interstate Commerce Commission  
Washington, D.C.

APR 19 1978 -9 00 AM

Gentlemen:

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and three counterparts of an Indenture of Mortgage, Assignment of Lease and Security Agreement dated as of February 1, 1978.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Debtor: Swindell-Dressler Leasing Company  
c/o Pullman Incorporated  
200 S. Michigan Avenue  
Chicago, Illinois 60604

Security Trustees: Harris Trust and Savings Bank  
and  
R. G. Mason  
111 West Monroe Street  
Chicago, Illinois 60603

The undersigned is the Debtor mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Please return the original and two copies of the Indenture of Mortgage, Assignment of Lease and Security Agreement to Robert Nash, Chapman and Cutler, 111 West Monroe, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the filing fee.

Very truly yours,

SWINDELL-DRESSLER  
LEASING COMPANY

Enclosures

By

*W. W. Lash*  
Vice President

8-109A010

APR 19 1978

Date

Fee \$ 50

CC Washington, D. C.

*C. J. Kappeler*  
*Counterpart*

DESCRIPTION OF EQUIPMENT

<u>Manufacturer</u>	<u>Type of Car</u>	<u>Specification</u>	<u>Number of Cars</u>	<u>Car Numbers</u>	<u>Delivery</u>
Ortner Freight Car Company	3850 cu. ft. capacity coal "Rapid Dis-charge" coal hopper rail-road cars	Ortner Freight Car Company No. OCN 1130 10-73 dated October 1, 1973 and supplement #1 dated February 5, 1974	128	SDEX 10001 to SDEX 10032, both inclusive; SDEX 10034 to SDEX 10097, both inclusive; and SDEX 10099 to SDEX 10130, both inclusive	October 1, 1975 Gillette, Wyoming
Ortner Freight Car Company	3850 cu. ft. capacity coal "Rapid Dis-charge" coal hopper rail-road cars	Ortner Freight Car Company No. OC 586	112	SDEX 10261 to SDEX 10372, both inclusive	August 30, 1978 Gillette, Wyoming
Pullman Incorporated (Pullman-Standard Division)	100-ton capacity quadruple open top, double automatic discharge door "Standard T-16" coal hopper rail-road cars	Pullman Incorporated (Pullman-Standard Division) No. 3628	130	SDEX 10131 to SDEX 10260, both inclusive	August 30, 1978 Gillette, Wyoming

RECORDATION NO. 9335 Filed & Recorded

APR 19 1978 -9 00 AM

INTERSTATE COMMERCE COMMISSION

INDENTURE OF MORTGAGE, ASSIGNMENT OF  
LEASE AND SECURITY AGREEMENT

Dated as of February 1, 1978

Between

SWINDELL-DRESSLER LEASING COMPANY,

Debtor

and

HARRIS TRUST AND SAVINGS BANK

and

R. G. MASON,

Security Trustees

Securing

\$18,542,000 9% Secured Notes Due 1979-1998

This instrument was  
prepared by:  
Robert C. Nash  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

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Attachments to Indenture of Mortgage, Assignment of Lease  
and Security Agreement:

- Exhibit A - Description of Land and Rights, Licenses  
and Easements Pertaining Thereto
- Exhibit B - Description of Equipment
- Exhibit C - Description of Facilities
- Exhibit D - Form of Interim Note
- Exhibit E - Form of 9% Secured Note (Registered Form)
- Exhibit F - Form of 9% Secured Note (Order Form)

INDENTURE OF MORTGAGE, ASSIGNMENT OF  
LEASE AND SECURITY AGREEMENT

INDENTURE OF MORTGAGE, ASSIGNMENT OF LEASE AND SECURITY AGREEMENT (the "Indenture") dated as of February 1, 1978 between SWINDELL-DRESSLER LEASING COMPANY, a Delaware corporation (the "Debtor"), whose post office address is c/o Pullman Incorporated, 200 South Michigan Avenue, Chicago, Illinois 60604, and HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation (the "Corporate Security Trustee"), and R. G. Mason (the "Individual Security Trustee") (said Corporate Security Trustee and Individual Security Trustee being hereinafter sometimes referred to as the "Security Trustees"), whose post office addresses are 111 West Monroe Street, Chicago, Illinois 60690, Attention: Indenture Trust Division.

R E C I T A L S:

A. The defined terms used in this Indenture shall have the respective meanings indicated in Section 1 unless elsewhere defined or the context shall otherwise require.

B. The Lessor has entered into a Loan Agreement dated as of February 1, 1978 (the "Loan Agreement") with Texas Commerce Bank National Association (the "Interim Lender"), providing for the commitment of the Interim Lender to make interim loans to the Lessor on not more than three closing dates occurring on or before August 30, 1978 in an aggregate principal amount not exceeding \$11,542,000 at any one time outstanding. Such loans are to be evidenced by the 7-3/4% Interim Note (the "Interim Note") of the Lessor to be dated the date of issue, to bear interest at the rate of 7-3/4% per annum prior to maturity and to be expressed to mature as to all payments of principal and interest in one installment equal to the entire principal amount of such Note and interest accrued thereon, to be payable not later than September 30, 1978, and to be otherwise substantially in the form of Order Note set forth as Exhibit D hereto.

C. The Debtor has entered into separate Note Agreements each dated as of February 1, 1978 (the "Note Agreements") with the purchasers named therein (the "Purchasers"), providing for the several commitments of the Purchasers to purchase on not more than two closing dates occurring on or before September 30, 1978, \$18,542,000 aggregate principal amount of the 9% Secured Notes (the "9% Notes") of the Debtor. The 9% Notes are to be dated the date of issue, to bear interest at the rate of 9% per annum prior to maturity, to be expressed to mature in one installment of interest only payable on October 1, 1978 and thereafter in 79 installments, including both principal and interest, each in an amount equal to 2.706376% of the



original principal amount of the Notes, payable quarterly on the first day of January, April, July and October in each year commencing January 1, 1979, with a final installment on October 1, 1998 in an amount equal to the entire principal and interest remaining unpaid as of said date and to be otherwise substantially in the form of the Registered Notes or Order Notes set forth as Exhibits E and F hereto, respectively.

D. The proceeds of the Interim Note are to be applied by the Debtor to finance a portion of the cost to the Debtor of (i) the Equipment leased or to be leased to the Lessee under the Equipment Lease referred to in Section 1 hereof, and (ii) the Facilities constructed or to be constructed in Potter County, Texas, and leased or to be leased to the Lessee under the Facilities Lease referred to in Section 1 hereof. The proceeds of the 9% Notes are to be applied to the payment of the Interim Note.

E. All of the requirements of law have been fully complied with and all other acts and things necessary to make this Indenture a valid, binding and legal instrument to secure the Indebtedness Hereby Secured have been done and performed.

NOW, THEREFORE, the Debtor in consideration of the premises and of the sum of Ten Dollars received by the Debtor from the Security Trustees and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest on the Notes according to their tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants and conditions contained in the Notes, this Indenture, the Loan Agreement and the Note Agreements, does hereby grant, bargain, sell, transfer, convey, mortgage, assign, pledge and hypothecate unto the Security Trustees, their successors in trust and assigns, forever, and grants to the Security Trustees, their successors in trust and assigns, forever, a security interest in, all and singular the following described properties, rights, interests and privileges and the proceeds thereof (hereinafter sometimes referred to as the "mortgaged property"):

#### DIVISION I

The Land described in Exhibit A attached hereto and made a part hereof.

#### DIVISION II

All the right, title and interest of the Debtor in the appurtenances, privileges, rights-of-way, rights, licenses and easements appertaining or belonging to the Land upon which the Facilities are located, including without limitation those certain easements described in Exhibit A attached hereto and made a part hereof.

### DIVISION III

All right, title and interest of the Debtor in all buildings, structures and improvements, together with all appurtenances thereto, and all heating, sprinkler and electric light systems, boilers, plumbing, tracks, tanks and switches and other machinery and equipment used or useful by the Debtor which are classified as fixtures and a part of the freehold under applicable laws, whether such right, title or interest is now owned or hereafter acquired, and which are located on the property described in Division I or Division II of these granting clauses.

### DIVISION IV

The Facilities, as the same are now and will hereafter be constituted, whether now owned by the Debtor or hereafter acquired, leased or to be leased under the Facilities Lease, together with all accessories, equipment, parts and appurtenances appertaining or attached to the Facilities, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to any and all of said Facilities, together with all the rents, issues, income, profits and avails thereof.

### DIVISION V

The Equipment, as the same is now and will hereafter be constituted, whether now owned by the Debtor or hereafter acquired, leased or to be leased under the Equipment Lease, and all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, together with all the rents, issues, income, profits and avails thereof.

### DIVISION VI

All right, title, interest, claims and demands of the Debtor as lessor in, to and under the Leases, including all extensions of the terms of the Leases, together with all rights, powers, privileges, options and other benefits of the Debtor as lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the lessor under the Leases pursuant thereto, and the right to make all waivers and agreements, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of an Event of Default under either of the Leases, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by such Leases or by law, and to do any and all other things whatsoever which the Debtor or any lessor is or may be entitled to do under such Leases;

it being the intent and purpose hereof that the assignment and transfer to the Security Trustees of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Security Trustees shall have the right to collect and receive said rents and other sums for application in accordance with the provisions of Section 5 hereof at all times during the period from and after the date of this Indenture until the Indebtedness Hereby Secured has been fully paid and discharged.

#### DIVISION VII

All right, title, interest, claims and demands of the Debtor in, to and under (i) the Assignment, (ii) the SPS Guaranty, (iii) the Subordination Agreement and (iv) the Master Coal Service Agreement (including without limitation the Service Fee Payments (as defined in the Master Coal Service Agreement)) and all sums due and to become due thereunder, together with all rights, powers, privileges, licenses, easements, options and other benefits of the Debtor under each thereof, including, without limitation, the right to make all waivers and agreements, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Debtor is or may be entitled to do thereunder, it being the intent and purpose hereof that the assignment and transfer to the Security Trustees of said rights, powers, privileges, licenses, easements, options and benefits shall be effective and operative immediately and shall continue in full force and effect at all times during the period from and after the date of this Indenture until the Indebtedness Hereby Secured has been fully paid and discharged.

SUBJECT, HOWEVER, to (a) the interest of the Lessee under the Leases, and (b) any other Permitted Encumbrances referred to in Section 1 hereof.

TO HAVE AND TO HOLD the mortgaged property unto the Security Trustees, their successors and assigns, forever; IN TRUST NEVERTHELESS, upon the terms and trust herein set forth, for the equal and proportionate benefit, security and protection of all present and future holders of the Notes outstanding (i) under the Loan Agreement and hereunder from and after the issuance of the Interim Note so long as such Note shall remain outstanding, and (ii) under the Note Agreements and hereunder from and after the issuance of the 9% Notes, without preference, priority or distinction of any Notes over any other Notes by reason of priority at the time of issue, sale, negotiation, date of maturity thereof or otherwise for any cause whatsoever; provided always, however, that these presents are upon the express condition that if the Debtor shall pay or cause to be paid all the Indebtedness Hereby Secured and shall observe, keep

and perform all the terms and conditions, covenants and agreements herein and in the Loan Agreement and the Note Agreements and the Notes contained, then these presents and the estate hereby granted and conveyed shall cease and this Indenture shall become null and void; otherwise this Indenture shall remain in full force and effect.

#### SECTION 1. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Indenture:

"Adjusted Tangible Assets" shall mean all assets except:

(a) deferred assets, other than prepaid insurance and prepaid taxes;

(b) patents, copyrights, trademarks, trade names, franchises, good will, experimental expense and other similar intangibles;

(c) Restricted Investments;

(d) unamortized debt discount and expense; and

(e) assets located and notes and receivables due from obligors domiciled outside the United States of America, Puerto Rico or Canada.

"Affiliate" shall mean a Person (other than a Restricted Subsidiary) (a) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Debtor, (b) which beneficially owns or holds 5% or more of any class of the Voting Stock of the Debtor or (c) 5% or more of the Voting Stock (or in the case of a Person which is not a corporation, 5% or more of the equity interest) of which is beneficially owned or held by the Debtor or a Subsidiary. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Assignment" shall mean the Assignment of Guaranty, Subordination Agreement and Master Coal Service Agreement (Security Agreement) dated as of February 1, 1978 from the Lessee to the Debtor, as said Assignment may from time to time be supplemented or amended.

"Consolidated Adjusted Net Worth" at any date shall mean:

(a) the net book value (after deducting related depreciation, obsolescence, amortization, valuation, and other proper reserves) at which the Adjusted Tangible Assets of

the Debtor and all Restricted Subsidiaries would be shown on a consolidated balance sheet at such date, but excluding any amount on account of write-ups of assets after December 31, 1977,

minus

(b) the amount at which their liabilities (other than capital stock and surplus) would be shown on such balance sheet, and including as liabilities all reserves for contingencies and other potential liabilities and all minority interests in Restricted Subsidiaries.

"Consolidated Fixed Charges" for any period shall mean the sum of (a) interest accrued and amortization of debt discount and expense during said period in respect of all Indebtedness of the Debtor and its Restricted Subsidiaries (whether or not paid or payable but only to the extent deducted in computing Consolidated Net Income for said period), and (b) the aggregate Rentals paid by the Company and its Restricted Subsidiaries under all leases of Property during said period.

"Consolidated Net Income" shall mean net earnings after income taxes of the Debtor and its Restricted Subsidiaries determined on a consolidated basis, but excluding:

(a) any gain or loss arising from the sale of capital assets;

(b) any gain arising from any write-up of assets;

(c) any gain arising from the sale of a Restricted Investment whether or not classified as a capital asset;

(d) earnings resulting from any reversal of any contingency reserve including any reserve for taxes, except to the extent that provision for such contingency reserve shall have been made from earnings arising during such period;

(e) any taxes on gains excluded and any tax deductions or credits on account of losses excluded under the preceding paragraphs (a), (b), (c) and (d);

(f) earnings of any Restricted Subsidiary accrued prior to the date it became a Restricted Subsidiary;

(g) earnings of any Person, substantially all the assets of which have been acquired in any manner, realized by such other corporation prior to the date of such acquisition;

(h) net earnings of any business entity (other than a Restricted Subsidiary) in which the Debtor or any Restricted Subsidiary has an ownership interest unless

such net earnings shall have actually been received by the Debtor or such Subsidiary in the form of cash distributions;

(i) any portion of the net earnings of any Restricted Subsidiary which for any reason is unavailable for payment of dividends to the Debtor or any other Restricted Subsidiary;

(j) the earnings of any person to which assets of the Debtor shall have been sold, transferred or disposed of, or into which the Debtor shall have merged, prior to the date of such transaction;

(k) any gain arising from the acquisition of any Securities of the Debtor or any Restricted Subsidiary; and

(l) any proceeds of insurance received by the Debtor or any Restricted Subsidiary to the extent included in earnings.

Any loss arising from the sale of a Restricted Investment shall be deducted from earnings in computing net earnings whether or not the Restricted Investment is classified as a capital asset.

"Default" shall mean any event which would constitute an Event of Default if any requirement in connection therewith for the giving of notice, or the lapse of time, or the happening of any further condition, event or act, had been satisfied.

"Distribution" in respect of any corporation shall mean:

(a) dividends or other distributions on capital stock of the corporation (except distributions in such stock); and

(b) the redemption or acquisition of such stock or of warrants, rights or other options to purchase such stock (except when solely in exchange for such stock) unless made, contemporaneously, from the net proceeds of a sale of such stock.

"Easements" shall mean the Easements, each dated December 29, 1975 of SPS to the Debtor, pertaining to the Premises.

"Equipment" shall mean every, and "Item of Equipment" shall mean each, item of railroad rolling stock described in Exhibit B hereto and in supplements to this Indenture from time to time executed, together with any and all appliances, parts, instruments, appurtenances, accessories and other equipment from time to time incorporated or installed thereon which are the property of the Debtor pursuant to the terms of the Equipment Lease.

"Equipment Lease" shall mean the Equipment Lease dated as of February 1, 1978 between the Debtor, as lessor, and the Lessee, as lessee, as said Equipment Lease may from time to time be supplemented or amended.

"Event of Default" is defined in Section 7.1 hereof.

"Facilities Indebtedness" is defined in Section 3.19 hereof.

"Facilities Lease" shall mean the Facilities Lease dated as of February 1, 1978, between the Debtor, as lessor, and the Lessee, as lessee, as said Facilities Lease may from time to time be supplemented or amended.

"Facility" shall mean each, and "Facilities" shall mean every, facility described in Exhibit C hereto, together with any and all appliances, parts, instruments, appurtenances, accessories and other equipment from time to time incorporated or installed thereon which are the Property of the Debtor pursuant to the terms of the Facilities Lease.

"Fixed Rent" shall mean the aggregate rent payable for the Equipment and the Facilities pursuant to Section 4(a) of the Equipment Lease and the Facilities Lease, respectively.

"Guaranty" by any Person shall mean all obligations of such Person guaranteeing or in effect guaranteeing any Indebtedness, dividend or other obligation, including without limitation any Indebtedness, dividend or other obligation which may be issued or incurred at some future time, of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any Property or assets constituting security therefor;

(b) to advance or supply funds

(i) for the purchase or payment of such indebtedness or obligation, or

(ii) to maintain working capital or other balance sheet condition or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease Property or to purchase Securities or other Property or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of the primary obligor to make payment of the Indebtedness or obligation; or

(d) otherwise to assure the owner of the Indebtedness or obligation of the primary obligor against loss in respect thereof.

For the purposes of all computations under Section 3.17, a Guaranty in respect of any Indebtedness for borrowed money shall be deemed to be Indebtedness equal to the principal amount of such Indebtedness

for borrowed money, and a Guaranty in respect of any other obligation or liability or any dividend shall be deemed to be Indebtedness equal to the maximum aggregate amount of such obligation, liability or dividend.

"Indebtedness" in respect of any Person means, without duplication, (a) all of the items except capital stock, retained earnings and capital reserves which are liabilities upon a balance sheet of such corporation, (b) all indebtedness, obligations and liabilities secured by any Lien existing on Property owned by such Person subject to such Lien, whether or not such indebtedness, obligations or liabilities have been assumed, (c) all Guaranties whether or not reflected in the balance sheet of such Person and (d) Rentals under any lease of Property.

"Indebtedness Hereby Secured" shall mean the Notes and all principal thereof (and premium, if any) and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Notes, this Indenture, the Loan Agreement or the Note Agreements.

"Interim Lender" is defined in Recital B hereof.

"Land" shall mean with respect to any Facility the parcel of land described in Exhibit A hereto upon which such Facility is located.

"Leases" shall mean the Equipment Lease and the Facilities Lease.

"Lessee" shall mean Swindell-Dressler Energy Supply Company, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Lien" shall mean any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances affecting real property. For the purposes of this Indenture, the Debtor shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Loan Agreement" is defined in Recital B hereof.

"Loan Value" is defined in the Leases.



"Master Coal Service Agreement" shall mean the Master Coal Service Agreement dated as of October 10, 1975 between the Lessee and TUCO, as said Master Coal Service Agreement may from time to time be supplemented or amended.

"Net Income Available for Consolidated Fixed Charges" for any period shall mean the sum of:

(a) the Consolidated Net Income for such period

PLUS (to the extent deducted in determining Consolidated Net Income)

(b) the sum of (i) state, Federal and local taxes measured by income and excess profits taxes paid or accrued by the Debtor and its Restricted Subsidiaries on account of such Consolidated Net Income during said period, and (ii) Consolidated Fixed Charges during said period.

"Note" shall mean any of, and "Notes" shall mean all of, the then outstanding Interim Note and 9% Notes referred to above, The term "outstanding" when used with reference to Notes shall mean, as of any particular time, all Notes delivered by the Debtor hereunder and secured hereby, except:

(a) the Interim Note following the payment thereof by application of the proceeds of the 9% Notes and extinguishment of the commitment of the Interim Lender under the Loan Agreement;

(b) Notes theretofore cancelled by the Debtor or delivered to the Debtor for cancellation;

(c) Notes for the payment or prepayment of which moneys in the necessary amount shall have been paid to the Noteholders or deposited in trust with the Corporate Security Trustee; provided, that if such Notes are to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Section 6 hereof provided, or provision satisfactory to the Corporate Security Trustee shall have been made for giving such notice;

(d) Notes in lieu of or in substitution for which other Notes shall have been delivered pursuant to the terms of Section 2 hereof; and

(e) Notes held by or under the direct or indirect control of the Debtor.

"Note Agreements" is defined in Recital C hereof.

"Noteholder" shall mean a bearer of an Order Note or a Person in whose name a Registered Note is registered in the Register.

"Officers' Certificate" shall mean a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of any corporation or a general partner of any partnership or the trustee of any trust, and delivered to the Corporate Security Trustee.

"Order Note" is defined in Section 2.3 hereof.

"Permitted Contest" shall mean a good faith contest by the Debtor or the Lessee, in a manner which the Corporate Security Trustee determines will not result in the imposition of any criminal penalty on, or adversely affect the title, property or right of the Security Trustees hereunder, of the legality or validity of any of the taxes, assessments, levies, fees and other governmental charges, or other claims, liens or impositions (collectively referred to in this paragraph as "charges") which, under the provisions of this Indenture or the Leases, are required to be paid by the Debtor or the Lessee. If the Corporate Security Trustee obtains an opinion of counsel for purposes of making such determination, the Debtor shall reimburse the Corporate Security Trustee for any reasonable legal fees incurred in obtaining such legal opinion. No contest which would otherwise be a Permitted Contest shall be carried on or maintained by the Lessee or the Debtor if an Event of Default has occurred and is continuing or after the time limited for the payment of any such charges unless the Debtor or the Lessee (as the case may be), at its option, (a) shall pay the amount involved under protest, or (b) shall procure and maintain a stay of all proceedings to enforce any collection of such charges, together with all penalties, interest, costs and expenses, by a deposit of a sufficient sum of money or by a good and sufficient undertaking as may be required or permitted by law to accomplish such stay, or (c) shall deposit with the Corporate Security Trustee, as security for the performance by the Debtor or the Lessee of its obligations hereunder with respect to such charges, an amount equal to the principal of the contested charges, plus such further amounts as the Corporate Security Trustee may reasonably require from time to time to cover all penalties, interest, costs and expenses that may accrue during the period of the contest. In the event any such contest is made by the Debtor or the Lessee, the Debtor or the Lessee, as the case may be, shall, within five days after final determination thereof adversely to it, fully pay and discharge the amount involved in or affected by any such contest, together with all penalties, fines, interest, costs or expenses that may have accrued thereon or that may result from any such action by the Debtor or the Lessee, as the case may be, whereupon the Corporate Security Trustee shall return to the Debtor or the Lessee, as the case may be, all amounts, if any, deposited in accordance with clause (c) of the third sentence of this paragraph.

"Permitted Encumbrances" shall mean, with respect to any Property, but only to the extent applicable to such Property; (a) the right of the Lessee under the Leases; (b) any liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which

is being contested by a Permitted Contest; (c) any liens of mechanics, suppliers, materialmen and laborers for work or service performed or materials furnished in connection with such Property which are not due and payable or the amount or validity of which is being contested by a Permitted Contest; (d) restrictions and other minor defects, encumbrances and irregularities in the title to any Facility and the Premises thereof which, in the aggregate, do not materially impair the use thereof or materially and adversely affect the value thereof; (e) rights reserved to or vested in any government or public authority to condemn or appropriate such Property or control or regulate such Property or the use of such Property in any manner; (f) rights, licenses and easements in respect of the Land constituting a portion of the mortgaged property; (g) the interest of TUCO under the Master Coal Service Agreement; (h) the reversionary interests of TUCO and SPS in the Premises arising under and by virtue of the Warranty Deed and the Easements, respectively; and (i) this Indenture and any rights granted as provided herein.

"Person" shall mean an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Premises" shall mean with respect to any Facility the Land on which such Facility is located, together with the easements, rights-of-way, rights, privileges, licenses and appurtenances thereto belonging or appertaining.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Pullman" shall mean Pullman Incorporated, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Purchasers" is defined in Recital C hereof.

"Register" is defined in Section 2.3 hereof.

"Registered Note" is defined in Section 2.3 hereof.

"Rent Payment Dates" is defined in the Leases.

"Rentals" as of the date of determination shall mean all fixed payments which the lessee is required to make by the terms of any lease (including all payments which the lessee is required to make to the lessor on termination of the lease or surrender of the Property covered thereby), but shall not include amounts required to be paid in respect of maintenance, repairs, income taxes, property taxes, insurance, interest, assessments, amortization or other similar charges or additional rentals (in excess of fixed minimums) based upon a percentage of gross receipts.

"Restoration" is defined in Section 5.1 hereof.

"Restricted Investments" shall mean all investments, made in cash or by delivery of Property, by the Debtor and its Restricted Subsidiaries (a) in any Person, whether by acquisition of stock, indebtedness or other obligation or Security, or by loan, advance or capital contribution, or otherwise, or (b) in any Property (items (a) and (b) herein called "Investments"), except the following:

(i) Investments in one or more Restricted Subsidiaries or any corporation which concurrently with such Investment becomes a Restricted Subsidiary;

(ii) Property to be used in the ordinary course of business as described in Section 3.21;

(iii) Investments in direct obligations of the United States of America, or any agency thereof or obligations guaranteed by the United States of America, provided that such obligations mature within one year from the date of acquisition thereof;

(iv) Investments in certificates of deposit maturing within one year from the date of acquisition issued by a bank or trust company organized under the laws of the United States or any state thereof having capital, surplus and undivided profits aggregating at least \$50,000,000; and

(v) Investments in commercial paper given the highest rating by a national credit rating agency and maturing not more than 270 days from the date of creation thereof.

Investments shall be valued at cost less any net return of capital through the sale or liquidation thereof or other return of capital thereon.

"Restricted Subsidiary" shall mean a Subsidiary,

(a) organized under the laws of the United States, Puerto Rico or Canada or a jurisdiction thereof,

(b) which conducts substantially all of its business and has substantially all of its Property within the United States, Puerto Rico and Canada, and

(c) at least 80% (by number of votes) of the Voting Stock of which and 100% of all other stock and equity Securities of which are legally and beneficially owned by the Company and its Wholly-Owned Restricted Subsidiaries.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"SPS" shall mean Southwestern Public Service Company, a New Mexico corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"SPS Guaranty" shall mean the Guaranty Agreement dated as of October 10, 1975 between the Lessee and SPS, as said SPS Guaranty may from time to time be supplemented or amended.

"Subordination Agreement" shall mean the Agreement of Subordination dated as of December 29, 1975, between the Lessee and SPS, as said Subordination Agreement may from time to time be supplemented or amended.

"Subsidiary" shall mean a corporation of which the Debtor owns, directly or indirectly, more than 50% of the Voting Stock.

"Substantial Part" as used in Sections 3.14 and 3.15 shall mean, when used with respect to Consolidated Adjusted Net Worth, more than 10% thereof and when used with respect to Consolidated Net Income for any period, more than 10% thereof for such period. Computations pursuant to Section 3.15 shall include dispositions made pursuant to Section 3.14 and computations pursuant to Section 3.14 shall include dispositions made pursuant to Section 3.15.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Fixed Rent) which the Lessee is obligated to pay under the Leases, including, without limitation, Casualty Value payments.

"TUCO" shall mean TUCO, Inc., a New Mexico corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Voting Stock" shall mean Securities of any class or classes of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"Warranty Deed" shall mean the Warranty Deed dated December 29, 1975 of TUCO to the Debtor, pertaining to the Premises.

"Wholly-Owned Restricted Subsidiary" shall mean any Restricted Subsidiary, all of the equity Securities (except directors' qualifying shares) of which are owned by the Debtor and/or the Debtor's other Wholly-Owned Restricted Subsidiaries.

## SECTION 2. EXECUTION, PAYMENT, REGISTRATION, ETC. OF NOTES.

Section 2.1. Registration, Execution and Denominations.  
The Notes issuable hereunder may be either Registered Notes registered as to principal and interest or Order Notes transferable by endorsement

and delivery and in either case shall be signed on behalf of the Debtor by its President, any of its Vice Presidents or any other officer of the Debtor who at the date of the actual execution of such Note, shall be a proper officer to execute the same. Each Note shall be in the denomination of \$50,000 or any multiple of \$1,000 in excess of \$50,000, except as may be necessary to reflect any principal amount not evenly divisible by \$1,000 and except that in the event the unpaid principal amount of any Note surrendered for transfer or exchange is less than \$50,000, a new Note may be issued in such lesser principal amount.

#### Section 2.2. Payment of Notes.

(a) The principal of, premium, if any, and interest on the Notes shall be payable at the principal office of the Corporate Security Trustee, in lawful money of the United States of America. Payment of principal and interest on the Notes shall be made only upon presentation of such Notes to the Corporate Security Trustee for notation thereon of the amount of such payment.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this Section 2.2, the Debtor will pay all amounts payable with respect to any Notes held by each holder of Registered Notes and by each institutional holder of Order Notes which has given written notice to the Debtor (such as the written direction given in Schedule I to this Indenture) requesting that the provisions of this Section shall apply (without any presentment of such Notes and without any notation of such payment being made thereon) by crediting before 12:00 noon, New York time, by federal funds bank wire transfer, the account of such holder in any bank in the United States as may be designated in writing by such holder, or in such other manner or to such other address in the United States as may be designated in writing by such holder.

#### Section 2.3. Registered and Order Notes; the Register.

The Interim Notes shall be issuable as unregistered Notes transferable by endorsement and delivery (the "Order Interim Notes") in the form attached hereto as Exhibit D. The 9% Notes shall be issuable as fully registered Notes (the "Registered Notes") in the form attached hereto as Exhibit E, or as unregistered Notes transferable by endorsement and delivery (the "Order 9% Notes", said Order 9% Notes and Order Interim Notes being collectively referred to as the "Order Notes") in the form attached hereto as Exhibit F. The Debtor shall cause to be kept at its principal office a register for the registration and transfer of Registered Notes (herein called the "Register"). The names and addresses of the holders of the Notes, the transfers of the Notes and the names and addresses of the transferees of all Notes shall be registered in the Register.

Section 2.4. Transfers and Exchanges of Notes; Lost or Mutilated Notes.

(a) Any Order Note shall be treated as negotiable and title thereto shall pass by endorsement and delivery. Each holder of an Order Note, by its acceptance thereof, agrees that if such holder shall sell or transfer such Order Note, such holder will notify the Debtor of the name and address of the transferee, and such holder will, prior to the delivery of such Order Note, make a notation on such Order Note of the date to which interest has been paid thereon and of the amount of any prepayments made on account of the principal thereof.

(b) The holder of any Registered Note may transfer such Note upon the surrender thereof at the principal office of the Debtor. Thereupon, the Debtor shall execute in the name of the transferee a new Registered Note or Registered Notes in aggregate principal amount equal to the original principal amount of the Note so surrendered, and shall deliver such new Registered Note or Registered Notes to such transferee.

(c) The holder of any Order Note or the holder of any Registered Note may at any time surrender such Note at the principal office of the Debtor in exchange for an equal aggregate principal amount of Notes either in the form of Registered Notes or in the form of Order Notes, or partly one and partly the other, in any authorized denominations.

(d) All Notes presented or surrendered for transfer shall be accompanied (if so required by the Debtor) by a written instrument or instruments of assignment or transfer, in form satisfactory to the Debtor, duly executed by the holder or by its attorney duly authorized in writing. The Debtor shall not be required to make a transfer or an exchange of any Note for a period of ten days preceding any installment payment date with respect thereto.

(e) No notarial seal shall be necessary for the transfer or exchange of any Note pursuant to this Section 2.4, and the holder of any Note issued as provided in this Section 2.4 shall be entitled to any and all rights and privileges granted under this Indenture to a holder of a Note.

(f) In case any Note shall become mutilated or be destroyed, lost or stolen, the Debtor, upon the written request of the holder thereof, shall execute and deliver a new Note in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. The applicant for a substituted Note shall furnish to the Debtor such security or indemnity as may be required by them to save each of them harmless from all risks, and the applicant shall also furnish to the

Debtor evidence to its satisfaction of the mutilation, destruction, loss or theft of the applicant's Note and of the ownership thereof. In case any Note which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Debtor may, instead of issuing a substituted Note, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Note), if the applicant for such payment shall furnish to the Debtor such security or indemnity as it may require to save it harmless, and shall evidence to the satisfaction of the Debtor the mutilation, destruction, loss or theft of such Note and the ownership thereof. If the Interim Lender or any Purchaser or its nominee is the owner of any mutilated, destroyed, lost or stolen Note, then the affidavit of its President, Vice President, Assistant Vice President or Treasurer in form reasonably satisfactory to the Debtor setting forth the fact of destruction, loss or theft and the ownership of the Note by the Interim Lender or such Purchaser, as the case may be, at the time of such mutilation, destruction, loss or theft shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Note other than the written agreement of the Interim Lender or such Purchaser, in form reasonably satisfactory to the Debtor to indemnify the Debtor.

#### Section 2.5. The New Notes.

(a) Each new Note (herein, in this Section 2.5, called a "New Note") issued pursuant to Section 2.4(b), (c) or (f) in exchange for or in substitution or in lieu of an outstanding Note (herein, in this Section 2.5, called an "Old Note") shall be dated the date of such Old Note. The Debtor shall mark on each New Note (i) the date to which principal and interest have been paid on such Old Note, (ii) all payments and prepayments of principal previously made on such Old Note which are allocable to such New Note, and (iii) the amount of each installment payment payable on such New Note. Each installment payment payable on such New Note on any date shall bear the same proportion to the installment payment payable on such Old Note on such date as the original principal amount of such New Note bears to the original principal amount of such Old Note. Interest shall be deemed to have been paid on such New Note to the date on which interest shall have been paid on such Old Note, and all payments and prepayments of principal marked on such New Note, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) Upon the issuance of a New Note pursuant to Section 2.4(b), (c) or (f), the Debtor may require the payment of a sum to reimburse it for, or to provide it with funds for, the payment of any tax or other governmental



charge or any other charges and expenses connected therewith which are paid or payable by the Debtor.

(c) All New Notes issued pursuant to Section 2.4(b), (c) or (f) in exchange for or in substitution or in lieu of Old Notes shall be valid obligations of the Debtor evidencing the same debt as the Old Notes and shall be entitled to the benefits and security of this Indenture to the same extent as the Old Notes.

(d) Upon the issuance of any Note pursuant to this Indenture, the Debtor shall deliver, or send by first-class mail, postage prepaid, one copy of an amortization schedule for such Note to the holder of such Note, in the case of a Registered Note, at its address set forth in the Register and, in the case of Order Notes, at the last address of such Noteholder of which the Debtor has knowledge setting forth the amount of the installment payments to be made on such Note after the date of issuance thereof and the unpaid principal balance of such Note after each such installment payment.

Section 2.6. Cancellation of Notes. All Notes surrendered for the purpose of payment, redemption, transfer or exchange shall be delivered to the Debtor for cancellation or, if surrendered to the Debtor, shall be cancelled by it, and no Notes shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture.

Section 2.7. Ownership. Any Order Note shall be treated as negotiable and title thereto shall pass by endorsement and delivery, but the Debtor shall not be bound to recognize any Person as the holder of an Order Note unless and until his title thereto has been satisfactorily established. The Person in whose name any Registered Note shall be registered shall be deemed and treated as the owner thereof for all purposes of this Indenture and the Debtor shall not be affected by any notice to the contrary. Payment of or on account of the principal of, premium, if any, and interest on such Registered Note shall be made only to or upon the order in writing of such registered owner. For the purpose of any request, direction or consent hereunder, the Debtor may deem and treat the registered owner of any Registered Note as the owner and holder thereof without production of such Registered Note.

### SECTION 3. COVENANTS AND WARRANTIES OF THE DEBTOR.

The Debtor covenants, warrants and agrees for the benefit of the Security Trustees and the holders of the Notes as follows:

Section 3.1. Payment of Principal, Premium and Interest. The Debtor will duly and punctually pay the principal of, premium, if any, and interest on, each and every Note, at the dates and the places and in the manner mentioned in the Notes and in this Indenture, according to the true intent and meaning thereof and hereof.

Section 3.2. Debtor's Duties. The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Loan Agreement, the Note Agreements, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Loan Agreement or the Note Agreements were fully set out in an amendment or supplement to this Indenture.

Section 3.3. Warranty of Title. The Debtor has the right, power and authority to grant a lien and security interest in the mortgaged property to the Security Trustees for the uses and purposes herein set forth; and the Debtor will warrant and defend the title to the mortgaged property against all claims and demands of Persons claiming by, through or under the Debtor (excepting only Permitted Encumbrances).

Section 3.4. Further Assurances. The Debtor will, at its own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the lien and security interest being herein provided for in the mortgaged property, whether now owned or hereafter acquired. Without limiting the foregoing, but in furtherance of the security interest herein granted in the Assignment, the SPS Guaranty, the Subordination Agreement and Master Coal Service Agreement, the Debtor covenants and agrees that it will notify TUCO and SPS of this Indenture and that it will direct TUCO and SPS to make all payments of sums due and to become due thereunder directly to the Corporate Security Trustee or as the Corporate Security Trustee may direct if an Event of Default under the Leases occurs and is continuing.

Section 3.5. After-Acquired Property. Any and all property described or referred to in the granting clauses hereof which is hereafter acquired shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Security Trustees, become and be subject to the lien and security interest herein granted as fully and completely as though specifically described herein, but nothing in this Section 3.5 contained shall be deemed to modify or change the obligation of the Debtor under Section 3.4 hereof.

Section 3.6. Recordation and Filing. (a) The Debtor will cause this Indenture and all supplements or amendments hereto, the Leases and the Assignment and all supplements or amendments thereto, and/or all financing and continuation statements and similar notices required by applicable law, at all times to be kept recorded and filed at its own expense in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Security Trustees hereunder, and will at its own expense furnish to the Security Trustees promptly after the execution and delivery of this Indenture and of each supplemental Indenture an opinion of

counsel (which may be counsel for the Lessee or the Debtor) stating that in the opinion of such counsel this Indenture or such supplement or amendment, as the case may be, has been properly recorded or filed for record so as to make effective of record the lien and security interest intended to be created hereby.

(b) On or before April 1 of each year commencing with the year 1979, the Debtor will deliver to the Security Trustees an opinion of counsel (which may be counsel for the Lessee or the Debtor) stating:

(i) that in the opinion of such counsel either (A) all necessary supplements or amendments to the Leases and the Assignment and hereto have been executed and delivered, and reciting the details of such action, or (B) no such supplements or amendments are necessary or advisable to give the Security Trustees a valid and enforceable lien and security interest upon the properties intended to be mortgaged hereunder (including replacements, additions and substitutions to the Facilities and the Equipment) or are necessary or advisable for the purposes of the Leases or the Assignment,

(ii) that in the opinion of such counsel either (A) such action has been taken with respect to the recording, filing, re-recording and re-filing of this Indenture and each supplement or amendment hereto, the Leases and the Assignment and each supplement or amendment thereto, any required financing and continuation statements and all other required papers as are necessary so as to perfect, preserve and protect the lien and security interest hereof, and reciting the details of such action, or (B) no such action is necessary to perfect, preserve and protect such lien and security interest, and

(iii) (A) what further actions, recordings, re-recordings and re-filings (including, but not limited to, filings of UCC-3 continuation statements) will be necessary on the part of the Lessee, the Debtor and the Security Trustees during the 18 months next succeeding April 1 of the year in which such opinion is required to be provided pursuant to this paragraph, in order to continue the perfection, preservation and protection of such lien and security interest and (B) when such actions, recordings, re-recordings and re-filings should be performed.

Section 3.7. Actions with Respect to Mortgaged Property.  
The Debtor will not:

(a) declare a default or exercise the remedies of the Lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification or surrender of, either of the Leases or by affirmative act consent to the creation or existence of any security interest or other lien (other than the security interest and Lien

of this Indenture) to secure the payment of Indebtedness upon the leasehold estate created by the Leases or any part thereof; or

(b) receive or collect or permit the receipt or collection of any rent payment under either of the Leases prior to the date for the payment thereof provided for by the Leases or assign, transfer or hypothecate (other than to the Security Trustees hereunder) any rent payment then due or to accrue in the future under the Leases in respect of the Facilities or Equipment; or

(c) sell, mortgage, transfer, assign or hypothecate (other than to the Security Trustees hereunder) its interest in the Facilities or Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Facilities or Equipment; or

(d) declare a default or exercise the rights or remedies of the Debtor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification, waiver or surrender of, the Assignment, the SPS Guaranty, the Subordination Agreement or the Master Coal Service Agreement or by affirmative act consent to the creation or existence of any security interest or other Lien (other than the security interest and Lien of this Indenture) to secure the payment of Indebtedness upon the right, title and interest of the Debtor in, to and under the Assignment, the SPS Guaranty, the Subordination Agreement or the Master Coal Service Agreement or any part thereof; or

(e) sell, mortgage, transfer, assign or hypothecate (other than to the Security Trustees hereunder) its right, title, interest, claims or demands in, to or under the Assignment, the SPS Guaranty, the Subordination Agreement or the Master Coal Service Agreement or any part of any thereof or in any amount to be received by it from the use or disposition of any such right, title, interest, claim or demand.

Section 3.8. Power of Attorney in Respect of the Leases and the Assignment. The Debtor does hereby irrevocably constitute and appoint the Corporate Security Trustee its true and lawful attorney with an interest and full power of substitution, for it and in its name, place and stead (a) to ask, demand, collect, receive and receipt for any and all rents, income and other sums which are assigned under the granting clauses hereof and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof, and (b) without limiting the provisions of the foregoing clause (a) hereof, during the continuance of any Event of Default under this Indenture, to sue for, compound and give acquittance for, to settle, adjust or compromise any claim for any and all such rents, income and other sums which are assigned under the granting clauses hereof as fully as the Debtor could itself do, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor or otherwise, which the Corporate

Security Trustee may deem necessary or appropriate to protect and preserve the right, title and interest of the Security Trustees in and to such rents and other sums and the security intended to be afforded hereby.

Section 3.9. Notice of Default. The Debtor further covenants and agrees that it will give the Security Trustees prompt written notice of any event or condition constituting an Event of Default under the Equipment Lease, the Facilities Lease or the Assignment, if any officer of the Debtor has actual knowledge of such event or condition and is also aware or should reasonably have been aware that such event or condition constitutes such an Event of Default.

Section 3.10. Maintenance of Corporate Existence, Rights, Compliance with Laws. The Debtor will at all times preserve its corporate existence and will cause each Subsidiary to preserve its corporate existence (except as otherwise permitted by Sections 3.14 and 3.15 hereof) and will obtain and maintain in full force and effect all franchises, privileges, rights, licenses and permits and all other consents, approvals and authorizations of any governmental authority necessary for the ownership and efficient operation and maintenance of its business and Property which failure to obtain and maintain would materially and adversely affect the Properties, business, prospects, profits or condition of the Company or any Subsidiary.

The Debtor will promptly comply and will cause each Subsidiary to comply with all laws, ordinances or governmental rules and regulations to which it is subject, including without limitation, the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974 and all laws, ordinances, governmental rules and regulations relating to environmental protection in all applicable jurisdictions, the violation of which would materially and adversely affect the Properties, business, prospects, profits or condition of the Debtor and its Subsidiaries.

Section 3.11. Taxes, Claims for Labor and Materials.  
(a) The Debtor will promptly pay and discharge and will cause each Subsidiary to promptly pay and discharge, all lawful taxes, assessments and governmental charges or levies imposed upon the Debtor or such Subsidiary, respectively, or upon or in respect of all or any part of the Property and business of the Debtor or such Subsidiary, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials which if unpaid might become a Lien upon any Property of the Debtor or such Subsidiary.

(b) Without limiting the provisions of Section 3.11(a) hereof, the Debtor will pay and discharge, before the same shall become delinquent, together with interest and penalties thereon, if any, (1) all taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, and whether or not within the contemplation of the parties hereto, which

are at any time levied upon or assessed against it or the mortgaged property or any part thereof or upon this Indenture or the Notes secured thereby, or upon the revenues, rents, issues, income and profits in respect of the mortgaged property, or arising in respect of the occupancy, use or possession thereof, which failure to pay would result in the creation of a Lien upon the mortgaged property or any part thereof, or upon the revenues, rents, issues, income and profits of the mortgaged property or in the diminution thereof or would result in any material interference with the use or operation of the mortgaged property by the Debtor or the Lessee, (ii) all corporate franchise, excise and other taxes, fees and charges assessed, levied or imposed in respect of its corporate existence or its right to do business in any state in which the mortgaged property is or may be located, (iii) all income, excess profits, excise, sales, franchise, gross receipts and other taxes, duties or imposts, whether of a like or different nature, assessed, levied or imposed by any governmental authority on it or the mortgaged property, or any portion thereof, or upon the revenues, rents, issues, income and profits of the mortgaged property whether or not the failure to pay any such tax, duty or impost might result in the creation of a Lien upon any asset of the Debtor or the mortgaged property or any part thereof or upon the revenues, rents, issues, income and profits of the mortgaged property or in the diminution thereof, and whether or not any such tax, duty or impost is payable directly by the Debtor or is subject to withholding at the source, and (iv) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might result in the creation of a Lien on the mortgaged property or upon the revenues, rents, issues, income and profits of the mortgaged property and, in general, will do or cause to be done everything necessary so that the Lien hereof shall be fully preserved, at the cost of the Debtor, without expense to the Security Trustees.

Nothing in this Section 3.11 shall require the payment of any sum which is required to be paid by the Debtor or any Subsidiary pursuant to this Section 3.11 so long as the Debtor or the Subsidiary, as the case may be, shall contest its obligation so to do by a Permitted Contest.

Section 3.12. Maintenance, Etc. (a) The Debtor will maintain, preserve and keep, and will cause each Subsidiary, to maintain, preserve and keep, its and their Properties (whether owned in fee or a leasehold interest) in good repair and working order and from time to time will make all necessary repairs, replacements, renewals and additions so that at all times the efficiency thereof shall be maintained.

(b) Without limiting the provisions of Section 3.12(a) hereof, the Debtor shall (i) promptly repair, restore or rebuild any buildings or improvements now or hereafter on that portion of the mortgaged property constituting the Land which may become damaged or be destroyed, (ii) keep the mortgaged property in good condition and repair ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Encumbrances, and (iii) make no material alterations in said mortgaged

property except as required by law or municipal ordinance or by this Section 3.12; provided, however, that so long as any part or portion of the mortgaged property is subject to a Lease, the maintenance thereof shall be in accordance with and to the extent provided in such Lease.

Section 3.13. Insurance. (a) The Debtor will maintain, and will cause each Subsidiary to maintain, insurance coverage by reputable insurance companies or associations, in such forms and amounts and against such hazards as are customary for companies of established reputation engaged in the same or a similar business and owning and/or operating similar properties.

(b) (i) Without limiting the provisions of Section 3.13(a) hereof, the Debtor will maintain or cause to be maintained in effect, property insurance with respect to the mortgaged property as follows: (A) Equipment. With respect to each Item of Equipment, physical damage insurance against loss or damage from any cause whatever (other than such causes as to which insurance coverage is not available to any Person) for the actual value of such Item of Equipment and in no event for less than the Loan Value for such Item of Equipment, subject to a deductible of not more than \$5,000 per occurrence or such greater amount as shall be approved in writing by the Security Trustees; and (B) Facilities. With respect to each of the Facilities, property insurance against loss by fire, windstorm and explosion and with extended coverage and against all such other risks as are customarily insured against by companies owning Property of a similar character and engaged in a business similar to that engaged in by the Debtor at not less than the greater of the Loan Value of such Facility as of the next succeeding Rent Payment Date or the replacement cost thereof. Any such insurance may have applicable thereto deductible provisions of not more than \$100,000, except that any such coverage may have deductible provisions applicable thereto which are consistent from time to time with the minimum deductible provisions generally made available by insurance companies for coal handling facilities and which are not higher than deductible provisions applicable to insurance coverage maintained by the Debtor for plants similar to the Facilities which it owns or operates. All such insurance shall provide that losses, if any, in respect of the mortgaged property shall be payable to the Security Trustees (except as provided below) under a standard mortgage loss payable clause satisfactory to the Debtor and the Security Trustees.

(ii) Liability Insurance. Without limiting the provisions of Section 3.13(a) hereof, the Debtor will maintain or cause to be maintained in effect, general public liability insurance with respect to the mortgaged property as follows: (A) Equipment. With respect to each Item of Equipment, comprehensive public liability insurance against liability for bodily injury, death and property damage, in an amount for bodily injury and death of at least \$25,000,000 each occurrence, subject to a deductible of not more than \$2,000,000 in the aggregate for all of the Equipment per occurrence. All such

insurance shall name the Debtor and Security Trustees as additional assureds; and (B) Facilities. With respect to each Facility, general public liability insurance against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$25,000,000 in respect of bodily injury or property damage in respect of any one occurrence. Any such insurance may have applicable thereto deductible provisions of not more than \$100,000, except that any such coverage may have deductible provisions applicable thereto which are consistent from time to time with the minimum deductible provisions generally made available by insurance companies for coal handling facilities and which are not higher than deductible provisions applicable to insurance coverage maintained by the Lessee for plants similar to the Facilities which it owns or operates. Any such insurance shall also designate the Security Trustees as additional named assureds under such policies.

(iii) Losses. (A) Equipment. Any property insurance pertaining to the Equipment may provide that, unless a Default or an Event of Default shall have occurred and be continuing, losses shall be adjusted with the Debtor and that the proceeds thereof shall be payable to the Debtor and the Corporate Security Trustee as their interests shall appear; and (B) Facilities. The loss, if any, under any insurance covering the mortgaged property required to be carried by paragraphs (b)(i)(B) and (b)(ii)(B) shall be adjusted with the insurance companies by the Debtor, or otherwise collected, including the filing of proceedings deemed advisable by the Debtor, subject to the approval of the Security Trustees if the loss exceeds \$100,000. The loss so adjusted shall be paid to the Security Trustees pursuant to said loss payable clause unless the amount thereof is \$100,000 or less in which case such amount shall be paid directly to the Debtor. Any loss payable under any business interruption coverage with respect to the operation of the Facilities shall be separately adjusted and shall be paid directly to the Debtor without approval of the Security Trustees. If the amount under any deductible clause of any policy applies to both a property loss and a business interruption loss, the amount thereof shall, for the purposes of this paragraph (b)(iii)(B), be allocated solely to the business interruption claim.

(iv) Form of Policies. Any insurance policies carried in accordance with this Section 3.13(b) shall be written by companies of recognized national standing authorized to do business in the state or states in which the mortgaged property is located and shall provide that: (A) the Security Trustees' interest shall be insured regardless of any breach or violation by the Debtor of any warranties, declarations or conditions contained in such policies, (B) such insurance, as to the interest of the Security Trustees therein, shall not be invalidated by the use or operation of the mortgaged property for purposes which are not permitted by such policies, (C) the insurers shall waive any right of subrogation of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Debtor, (D) if any premium or installment is not paid when due, or if such



insurance would lapse or be cancelled, terminated or materially changed for any reason whatsoever, the insurers will promptly notify the Security Trustees and any such lapse, cancellation, termination or change shall not be effective as to the Security Trustees for thirty days after receipt of such notice, and (E) appropriate certification shall be made to the Security Trustees by each insurer with respect thereto. No such policy shall contain a provision under which the Debtor is a co-insurer or relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the mortgaged property against the peril involved, whether collectible or not. Any such insurance may be carried under blanket policies maintained by the Debtor so long as such policies otherwise comply with the provisions of this Section 3.13. Notwithstanding the requirements of this Section 3.13, so long as any part or portion of the mortgaged property is subject to a Lease, the scope, form and substance of the insurance maintained in respect thereof shall be as required by such Lease.

Section 3.14. Disposal of Shares of a Restricted Subsidiary. Neither the Debtor nor any Restricted Subsidiary will sell or otherwise dispose of any shares of the stock (or any options or warrants to purchase stock or other Securities exchangeable for or convertible into stock) of a Restricted Subsidiary (said stock, options, warrants and other Securities herein called "Subsidiary Stock"), nor will any Restricted Subsidiary issue, sell or otherwise dispose of any shares of its own Subsidiary Stock, if the effect of the transaction would be to reduce the proportionate interest of the Debtor and its other Restricted Subsidiaries in the outstanding Subsidiary Stock of the Restricted Subsidiary whose shares are the subject of the transaction, provided that the foregoing restrictions do not apply to:

- (a) the issue of directors' qualifying shares; and
- (b) the sale for a cash consideration at one time to a Person (other than directly or indirectly to an Affiliate) of the entire investment (whether represented by stock, debt, claims or otherwise) of the Debtor and its other Restricted Subsidiaries in any Restricted Subsidiary, if all of the following conditions are met:
  - (i) the assets (valued at greater of book or fair market value) of the Restricted Subsidiary do not, together with assets of the Debtor and all Restricted Subsidiaries previously disposed of since the date of this Indenture (other than in the ordinary course of business), exceed a Substantial Part of Consolidated Adjusted Net Worth;
  - (ii) in each of the three fiscal years then most recently ended, the sum of the portions of Consolidated Net Income (excluding losses) which were contributed during such year by (A) such Restricted Subsidiary, (B) each Restricted Subsidiary which has been disposed of since the beginning of such three fiscal year period, and (C) other assets of the Debtor and Restricted Subsidiaries disposed of since the beginning of such three fiscal year period (other than in the ordinary course of business), has not constituted a Substantial Part of Consolidated Net Income for any such year.

(iii) in the opinion of the Debtor's Board of Directors, the sale is for fair value and is in the best interests of the Debtor;

(iv) the Restricted Subsidiary being disposed of has no continuing investment in any other Restricted Subsidiary not being simultaneously disposed of or in the Debtor; and

(v) immediately after the consummation of the transaction and after giving effect thereto, no Default or Event of Default would exist.

Section 3.15. Sale of Assets or Merger.

(a) Sale of Assets. Neither the Debtor nor any Restricted Subsidiary will, except in the ordinary course of business, sell, lease, transfer or otherwise dispose of, assets provided that the foregoing restrictions do not apply to the sale of such assets for cash consideration to a Person other than an Affiliate if all of the following conditions are met:

(i) such assets (valued at greater of book or fair market value) do not, together with assets of the Debtor and all other Restricted Subsidiaries previously disposed of since the date of this Indenture (other than in the ordinary course of business), exceed a Substantial Part of Consolidated Adjusted Net Worth;

(ii) in each of the three fiscal years then most recently ended, the sum of the portions of Consolidated Net Income (excluding losses) which were contributed during such year by (A) such assets, (B) each Restricted Subsidiary which has been disposed of since the beginning of such three fiscal year period and (C) other assets of the Debtor and Restricted Subsidiaries disposed of since the beginning of such three fiscal year period (other than in the ordinary course of business), has not constituted a Substantial Part of Consolidated Net Income for any such year;

(iii) in the opinion of the Debtor's Board of Directors, the sale is for fair value and is in the best interests of the Debtor; and

(iv) immediately after the consummation of the transaction, and after giving effect thereto no Default or Event of Default would exist.

(b) Merger and Consolidation. Neither the Debtor nor any Restricted Subsidiary will consolidate with or merge into any other Person or permit any other Person to consolidate with or merge into it (except that a Restricted Subsidiary may consolidate with or merge into the Debtor or another Restricted Subsidiary and the Debtor may consolidate with or merge into a Wholly-Owned Restricted

Subsidiary or Pullman); provided that the foregoing restriction does not apply to the merger or consolidation of the Debtor with another corporation, if:

(i) the corporation which results from such merger or consolidation (the "surviving corporation") is organized under the laws of the United States or a jurisdiction thereof;

(ii) the due and punctual payment of the principal of and premium, if any, and interest on all of the Notes, according to their tenor, and the due and punctual performance and observance of all the covenants in the Notes and this Indenture to be performed or observed by the Debtor, are expressly assumed in writing by the surviving corporation;

(iii) after giving effect to the proposed merger or consolidation the surviving corporation will be engaged in substantially the same line of business as described in Section 3.21; and

(iv) immediately after the consummation of the transaction, and after giving effect thereto, no Default or Event of Default would exist.

#### Section 3.16. Liens and Encumbrances.

(a) Negative Pledge. Neither the Debtor nor any Restricted Subsidiary will (i) cause or permit or (ii) agree or consent to cause or permit in the future (upon the happening of a contingency or otherwise), any of its Property, whether now owned or hereafter acquired, to be subject to a Lien except:

(A) Liens securing taxes, assessments or governmental charges or levies or the claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons, provided the payment thereof is not at the time required by Section 3.11;

(B) Liens incurred or deposits made in the ordinary course of business in connection with workmen's compensation, unemployment insurance, social security and other like laws;

(C) attachment, judgment and other similar Liens arising in connection with court proceedings, provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(D) reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions and other similar title exceptions or encumbrances affecting real

Property provided they do not in the aggregate materially detract from the value of said Properties or materially interfere with their use in the ordinary conduct of the owning company's business;

(E) inchoate Liens arising under ERISA to secure the contingent liability of the Debtor permitted by Section 3.10;

(F) the reversionary interests of TUCO and SPS in the Premises arising under and by virtue of the Warranty Deed and the Easements, respectively;

(G) the Lien of this Indenture and the Leases; and

(H) the Lien of leases, mortgages, deeds of trust and security agreements entered into by the Debtor to finance the acquisition of Equipment and/or Facilities, provided that the Indebtedness issued or incurred by the Debtor in respect thereof shall be within the limitations of Section 3.17(b).

(b) Equal and Ratable Lien; Equitable Lien. In case any Property is subject to a Lien in violation of this Section 3.16, the Debtor will make or cause to be made provision whereby the Notes will be secured equally and ratably with all other obligations secured thereby, and in any case the Notes shall have the benefit, to the full extent that, and with such priority as, the holders may be entitled thereto under applicable law, of an equitable Lien on such Property securing the Notes. Such violation of Section 3.16 shall constitute an Event of Default hereunder, whether or not any such provision is made pursuant to this Section 3.16(b).

Section 3.17. Permitted Indebtedness. Neither the Debtor nor any Restricted Subsidiary will create, assume or incur, or in any manner be or become liable, contingently or otherwise, in respect of any Indebtedness except:

(a) the Notes;

(b) secured Indebtedness for borrowed money of the Debtor incurred to finance the acquisition of Equipment and/or Facilities used or to be used to transport coal to the Harrington Station Unit No. 3 generating station of SPS located in or near Amarillo, Texas, provided that at the time of issuance thereof and after giving effect thereto and to the application of the proceeds thereof no Default or Event of Default would exist;

(c) Guaranties permitted by Section 3.20; and

(d) current liabilities (other than Indebtedness for borrowed money) incurred in the ordinary course of business and not more than 30 days overdue unless the same are being

contested in good faith by appropriate proceedings and adequate book reserves (in the opinion of the Debtor's independent accountants) segregated to the extent required by sound accounting practice have been established with respect thereto.

Section 3.18. Maintenance of Net Income Available for Consolidated Fixed Charges. The Debtor will at all times keep and maintain the ratio of Net Income Available for Consolidated Fixed Charges to Consolidated Fixed Charges at not less than 1.25 to 1.

Section 3.19. Distributions and Investments. (a) Neither the Debtor nor any Restricted Subsidiary will declare or make or incur any liability to make any Distribution in respect of the capital stock of the Debtor or make or authorize any Restricted Investment unless, immediately after giving effect to the proposed Distribution or Restricted Investments, Consolidated Adjusted Net Worth exceeds Facilities Indebtedness. Facilities Indebtedness shall mean as of the date of any determination thereof an amount equal to the lesser of (i) 75% of the Lessor's Cost of the Facilities then subject to the Lien of this Indenture, or (ii) an amount computed and determined by: (A) First, deducting (x) 80% of the Purchase Price of all of the Equipment financed with the proceeds from the issuance of the 9% Notes from (y) the original aggregate principal amount of the 9% Notes (the "Total Indebtedness"); (B) Second, dividing (x) the result so obtained by (y) Total Indebtedness; and (C) Third, multiplying (x) the quotient obtained pursuant to clause (B) by (y) the aggregate principal amount of the Notes outstanding as of such date of determination.

For the purpose of making computations under this Section 3.19(a), the following Restricted Investments made by the Debtor shall be excluded: (i) those made solely by the issuance of capital stock of the Debtor, and (ii) those made in the form of loans to Pullman evidenced by notes of Pullman bearing interest from the respective dates such loans are made at a rate not less than 115% of the prime commercial rate of Mellon Bank, N.A., Pittsburgh, Pennsylvania.

Any corporation which becomes a Restricted Subsidiary after February 1, 1978 shall be deemed to have made, at the time it becomes a Restricted Subsidiary, all Restricted Investments of such corporation existing immediately after it becomes a Restricted Subsidiary.

(b) The Debtor will not authorize a Distribution on its capital stock which is not payable within sixty days of authorization.

(c) Neither the Debtor nor any Restricted Subsidiary will authorize or make a Distribution on the capital stock of the Debtor or make any Restricted Investment if after giving effect to the proposed Distribution or Restricted Investment a Default or an Event of Default would exist.

Section 3.20. Guaranties. Neither the Debtor nor any Restricted Subsidiary will become or be liable in respect of any Guaranty except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection.

Section 3.21. Nature of Business. Neither the Debtor nor any Restricted Subsidiary will engage in any business other than the ownership and leasing of coal unit trains and coal handling facilities used and intended to be used in connection with the operation of the Harrington Generating Station of SPS in or near Amarillo, Texas.

Section 3.22. Transactions with Affiliates. Neither the Debtor nor any Restricted Subsidiary will enter into any transaction, including, without limitation, the purchase, sale or exchange of Property or the rendering of any service, with any Affiliate except in the ordinary course of and pursuant to the reasonable requirements of the Debtor's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Debtor or such Subsidiary than would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

Section 3.23. Tax Consolidation. The Debtor will not file or consent to the filing of any consolidated income tax return with any Person other than a Subsidiary or Pullman.

Section 3.24. Sale or Discount of Receivables. Neither the Debtor nor any Restricted Subsidiary will discount or sell with recourse, or sell for less than the greater of the face value or market value thereof, any of its notes receivable or accounts receivable.

Section 3.25. Acquisition of Notes. Neither the Debtor nor any Restricted Subsidiary nor any Affiliate will, directly or indirectly, acquire or make any offer to acquire any Notes unless the Debtor or such Restricted Subsidiary or Affiliate has offered to acquire Notes, pro rata, from all holders of the Notes and upon the same terms. In case the Debtor acquires any Notes, such Notes shall thereafter be cancelled and no notes shall be issued in substitution therefor.

Section 3.26. Information as to Debtor. (a) Financial Records. The Debtor will keep true books of records and accounts in which full and correct entries will be made of all its business transactions, and will reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with generally accepted accounting principles and will furnish to the Security Trustees, the Purchasers and each other institutional holder of the then outstanding Notes:

(i) Quarterly Statements. As soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Debtor, and in any event within 60 days thereafter, duplicate copies of:

(1) a consolidated balance sheet of the Debtor and its consolidated Subsidiaries, and of the Debtor and its Restricted Subsidiaries, as at the end of such quarter, and

(2) consolidated statements of income and of surplus of the Debtor and its consolidated Subsidiaries, and of the Debtor and its Restricted Subsidiaries, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods of the preceding fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from fiscal year-end adjustments, by a principal financial officer of the Debtor;

(ii) Annual Statements. As soon as practicable after the end of each fiscal year of the Debtor, and in any event within 90 days thereafter, four copies of:

(1) a consolidating and consolidated balance sheet of the Debtor and its consolidated Subsidiaries, and of the Debtor and its Restricted Subsidiaries, at the end of such year, and

(2) consolidated statements of operations, earned surplus and changes in financial position of the Debtor and its consolidated Subsidiaries, and of the Debtor and its Restricted Subsidiaries, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion of Arthur Young & Company or other independent certified public accountants of recognized national standing selected by the Debtor, which opinion shall state that such financial statements fairly present the financial condition of the companies being reported upon and have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) Opinions of Independent Accountants and Counsel. As soon as practicable after the end of each fiscal year of the Debtor, and in any event within 45 days thereafter, duplicate copies of all opinions of independent accountants and counsel required pursuant to Section 3.11 hereof;

(iv) Audit Reports. Promptly upon receipt thereof, one copy of each other report submitted to the Debtor or any Subsidiary by independent certified public accountants in connection with any annual, interim or special audit made by them of the books of the Debtor or any Subsidiary;

(v) SEC and Other Reports. Promptly upon their becoming available one copy of each financial statement, report, notice or proxy statement sent by the Debtor or any Subsidiary to stockholders generally, and of each regular or periodic report and any registration statement, prospectus or written communication (other than transmittal letters) in respect thereof filed by the Debtor or any Subsidiary with, or received by such Person in connection therewith from, any securities exchange or the Securities and Exchange Commission or any successor agency;

(vi) ERISA. Immediately upon becoming aware of the occurrence of any (A) "reportable event", as such term is defined in Section 4043 of ERISA; or (B) "prohibited transaction", as such term is defined in Section 4975 of the Internal Revenue Code of 1954, as amended, in connection with any Pension Plan or any trust created thereunder, a written notice specifying the nature thereof, what action the Debtor is taking or proposes to take with respect thereto, and, when known, any action taken by the Internal Revenue Service with respect thereto;

(vii) Notice of Default or Event of Default. Immediately upon becoming aware of the existence of any condition or event which constitutes a Default or an Event of Default a written notice specifying the nature and period of existence thereof and what action the Debtor is taking or proposes to take with respect thereto;

(viii) Notice of Claimed Default. Immediately upon becoming aware that the holder of any Note or of any evidence of indebtedness or other Security of the Debtor or any Subsidiary has given notice or taken any other action with respect to a claimed Default or Event of Default, a written notice specifying the notice given or action taken by such holder and the nature of the claimed Default or Event of Default and what action the Debtor is taking or proposes to take with respect thereto;

(ix) Information in Respect of Damages and Taxes. Such information and data as the Security Trustees or any Purchaser or any institutional holder of the then outstanding Notes may from time to time reasonably request as to location and the existence and status of any claims for damages (whether against the mortgaged property or against the Debtor) arising out of the use, operation or condition of the mortgaged property, the taxes of the nature provided to be paid by the Debtor under Section 3.11 hereof which



have been assessed and the amount of such taxes paid, and such other data pertinent to the mortgaged property and the condition, use, repair and operation thereof as any such party from time to time may reasonably request; and

(x) Requested Information. With reasonable promptness, such other data and information as from time to time may be reasonably requested.

(b) Officers' Certificate. Each set of financial statements delivered by the Debtor pursuant to Section 3.26(a)(i) or 3.26(a)(ii) will be accompanied by a certificate of the President or a Vice President and the Treasurer or an Assistant Treasurer of the Debtor setting forth:

(i) Covenant Compliance. The information (including detailed calculations) required in order to establish whether the Debtor was in compliance with the requirements of Sections 3.14 through 3.25 during the period covered by the income statement then being furnished; and

(ii) Event of Default. That the signers have reviewed the relevant terms of this Indenture and have made, or caused to be made, under their supervision, a review of the transactions and conditions of the Debtor and its Subsidiaries from the beginning of the accounting period covered by the income statements being delivered therewith to the date of the certificate and that such review has not disclosed the existence during such period of any condition or event which constitutes a Default or an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Debtor has taken or proposes to take with respect thereto.

(c) Accountants' Report. Each set of annual financial statements delivered pursuant to Section 3.26(a)(ii) will be accompanied by a certificate of the accountants who certify such financial statements stating that they have reviewed this Indenture and stating further, whether, in making their audit, such accountants have become aware of any condition or event which then constitutes a Default or an Event of Default, and, if any such condition or event then exists, specifying the nature and period of existence thereof.

(d) Inspection. The Debtor will permit any of the representatives of the Security Trustees, the Purchasers or the representatives of any other institutional holder of the Notes, at such party's expense, to visit and inspect any of the Properties of the Debtor or any Subsidiary, to examine all their books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (and by this provision the Debtor

authorizes said accountants to discuss the finances and affairs of the Debtor and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested.

#### SECTION 4. POSSESSION, USE AND RELEASE OF PROPERTY.

Section 4.1. Possession of Mortgaged Property. While the Debtor is not in default hereunder it shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment and the Facilities and the Premises thereof and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided, always, that the possession, enjoyment, control and use thereof shall at all times be subject to the observance and performance of the terms of this Indenture. It is expressly understood that the use and possession of the Equipment and the Facilities and the Premises thereof by the Lessee under and subject to the Leases shall not constitute a violation of this Section 4.1.

Section 4.2. Release of Equipment and Facilities and Premises Thereof--Substitution or Replacement by Lessee. So long as no Event of Default referred to in Section 15 of the Equipment Lease or the Facilities Lease has occurred and is continuing to the knowledge of the Security Trustees (a) the Security Trustees shall execute a release in respect of any Item of Equipment for which a substitution or replacement has been made pursuant to Section 13 of the Equipment Lease upon receipt of evidence of compliance with the terms of Section 13(b) of the Lease and Section 5.1 hereof in respect of such Item, and (b) the Security Trustees shall, upon request of the Lessee, execute a release in respect of any part or parts of any Facility which are removed and replaced in accordance with the provisions of Section 8(b) or the proviso to Section 8(e) (1)(A) of the Facilities Lease.

Section 4.3. Condemnation. The Debtor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the mortgaged property or any portion thereof, shall notify the Corporate Security Trustee of the pendency of such proceedings. The Security Trustees may participate in any such proceedings, and the Debtor from time to time will deliver or cause to be delivered to the Corporate Security Trustee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Debtor or assigned to the Debtor by the Lessee under the Leases shall be paid to the Corporate Security Trustee, and such award or compensation shall be retained by the Corporate Security Trustee as part of the mortgaged property and applied in accordance with Section 5.1 hereof. The Security Trustees shall be under no obligation to question the amount of the award or compensation and the Corporate Security Trustee may accept any such award or compensation. In any such condemnation proceedings the Security Trustees may be represented by counsel.

Section 4.4. Release of Equipment or Facilities--Consent of Noteholders. In addition to the release pursuant to the foregoing sections, the Debtor may sell or otherwise dispose of any Item of Equipment or any Facility and the Premises thereof then subject to the lien of this Indenture, and the Security Trustees shall release the same from the lien and security interest hereof, to the extent and on the terms and upon compliance with the conditions provided for in any written consent given thereto at any time or from time to time by the holder or holders of all the Indebtedness Hereby Secured. The Debtor understands and agrees that such holder or holders shall have no obligation whatsoever to give any such consent.

Section 4.5. Protection of Purchaser. No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Security Trustees to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the mortgaged property be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

SECTION 5. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE SECURITY TRUSTEES.

Section 5.1. Insurance Proceeds. The amounts received by or payable to the Corporate Security Trustee from time to time which constitute insurance proceeds in respect of any damage to or destruction of any Item of Equipment or any Facility or any part thereof (less the actual costs, fees and expenses incurred in the collection thereof) shall be paid over to the Lessee or as it may direct from time to time as restoration, replacement, rebuilding, alterations and additions ("Restoration") progress to pay (or reimburse the Lessee for) the cost of Restoration, if the amount of such proceeds received by the Corporate Security Trustee, together with such additional amounts, if any, theretofore expended by the Lessee out of its own funds for such Restoration are sufficient to pay the estimated cost of completing such Restoration, but only upon a written application of the Lessee accompanied by an Officers' Certificate of the Lessee showing in reasonable detail the nature of such Restoration, the actual cash expenditures made to date for such Restoration, the estimated cost (which shall be verified by an accompanying certificate of an engineer or architect not an employee of the Lessee) to complete Restoration and stating that no Default or Event of Default has occurred and is continuing under the Leases to the knowledge of the Lessee. Upon the written request of the Debtor and the Lessee, accompanied by evidence satisfactory to the Corporate Security Trustee that the Restoration has been completed and the costs thereof paid in full and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid over or assigned to the Lessor or as it may direct for application in accordance with the Equipment Lease or the Facilities Lease, as the case may be, upon receipt by

the Corporate Security Trustee of a supplement hereto sufficient, as shown by an opinion of counsel (which may be counsel for the Lessee or the Debtor), to grant a lien and security interest in any additions to or substitutions for the Equipment or Facilities, as the case may be, to the Corporate Security Trustee, which opinion shall also cover the filing and/or recording of such supplement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) so as to perfect the lien and security interest in such additions or substitutions, or in the alternative an opinion that no such supplement is required for such purpose.

Section 5.2. Condemnation Awards. Any amounts received by or payable to the Corporate Security Trustee from time to time which constitute an award, compensation or damages payable for the condemnation or taking of any Item of Equipment or any part of any Facility for any public or quasi-public use (less the actual costs, fees and expenses incurred in the collection thereof) shall be applied to the cost of Restoration in the same manner and subject to the same conditions as provided in Section 5.1 with respect to insurance proceeds.

Section 5.3. Mortgage Title Insurance. Any moneys received by the Corporate Security Trustee as payment for any loss under any policy of mortgage title insurance which was delivered by the Debtor shall become part of the mortgaged property and shall be paid and applied in the manner contemplated by Section 5.1 hereof.

Section 5.4. Application if Event of Default Exists. If an Event of Default has occurred and is continuing to the knowledge of the Corporate Security Trustee, all amounts received by the Corporate Security Trustee under this Indenture shall be applied in the manner provided for in Section 7 hereof in respect of proceeds and avails of the mortgaged property.

## SECTION 6. PREPAYMENT OF NOTES.

Section 6.1. Prepayments. No prepayment of any Notes may be made except to the extent and in the manner expressly permitted by this Indenture. The portions constituting principal of each level quarterly installment payable in respect of the 9% Notes shall be and they are hereby deemed to be required prepayments with payment thereof to be made on the quarterly installment payment dates set forth in the 9% Notes. Payment of the aggregate principal amount of the Interim Note shall be and it is hereby deemed to be a required payment in respect of the Interim Note to be made on the maturity date set forth therein.

Section 6.2. Notice of Prepayment; Partial Prepayment; Deposit of Moneys. (a) The Debtor will give notice of any optional prepayment of the 9% Notes to the Corporate Security Trustee and to each holder of the 9% Notes not less than 30 days nor more than 60 days before the date fixed for prepayment, specifying (i) such date,

(ii) the section of this Indenture under which the prepayment is to be made, (iii) the principal amount of the holder's 9% Notes to be prepaid on such date, and (iv) the premium, if any, and accrued interest applicable to the prepayment. Such notice of prepayment shall also certify all facts which are conditions precedent to any such prepayment. Notice of prepayment having been so given, the aggregate principal amount of the Notes specified in such notice, together with the premium, if any, and accrued interest thereon shall become due and payable on the prepayment date.

(b) If there is more than one holder of the 9% Notes, the aggregate principal amount of each partial prepayment of the 9% Notes shall be allocated in units of \$1,000 or multiples thereof among the holders of the 9% Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts of the 9% Notes then outstanding, with adjustments, to the extent practicable, to equalize for any prior prepayments not in such proportion. For the purpose of this Section 6.2(b) only, any 9% Notes reacquired by the Debtor shall be deemed to be outstanding and the Debtor shall be deemed to be the holder thereof. Partial prepayments pursuant to Section 6.3 hereof shall be applied on the installments of each 9% Note in the inverse order of the maturities thereof.

(c) On or prior to the date fixed for any prepayment of 9% Notes the moneys required for such prepayment shall be deposited with the Corporate Security Trustee by the Debtor. Interest on any 9% Note designated for prepayment or on any portion of the principal amount of any 9% Note designated for prepayment shall cease upon the date fixed for prepayment unless default shall be made in the deposit with the Corporate Security Trustee of the amount payable upon the prepayment thereof.

Section 6.3. Prepayments at the Option of the Debtor.

The Debtor may prepay the 9% Notes in whole or part at any time after September 30, 1988 in multiples of \$50,000 at the applicable percentage set out below of the principal amount then being prepaid, together with accrued interest on the principal amount so prepaid to the prepayment date:

<u>If Prepayment is Made During the 12-Month Period Ending September 30 in the Year</u>	<u>Percentage of Principal Amount</u>
1989	104.50%
1990	104.00%
1991	103.50%
1992	103.00%
1993	102.50%
1994	102.00%
1995	101.50%
1996	101.00%
1997	100.50%
1998	100.00%

Section 6.4. Amortization Schedules. On the date of the partial prepayment of any 9% Note, the Debtor shall deliver to the Corporate Security Trustee two copies of an amortization schedule with respect to such 9% Note setting forth the amount of the installment payments to be made on such 9% Note after the date of such partial prepayment and the unpaid principal balance of such 9% Note after each such installment payment. The Corporate Security Trustee shall deliver, or send by first-class mail, postage prepaid, one such copy of the applicable schedule to the holder of such 9% Note at its address set forth in the Register.

## SECTION 7. DEFAULTS AND REMEDIES.

Section 7.1. Events of Default. Any of the following occurrences or acts shall constitute an "Event of Default" under this Indenture:

(a) Principal, Interest or Premium Payments. Default in payment of an installment of the principal of, or interest or premium on, any Note when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise, and any such default shall continue unremedied for ten days; or

(b) Particular Covenant Defaults. The Debtor or any Subsidiary fails to perform or observe any covenant contained in Section 3.9, Sections 3.13 through 3.25 or in Section 3.26(a)(vii) or Section 3.26(a)(viii) hereof; or

(c) Other Defaults. The Debtor or any Subsidiary fails to comply with any other provision of this Indenture, and such failure continues for more than 30 days after such failure shall first become known to any officer of the Debtor; or

(d) Warranties or Representations. Any warranty, representation or other statement by or on behalf of the Debtor, the Lessee, Pullman, TUCO or SPS contained in this Indenture, the Loan Agreement or the Note Agreements or in any instrument furnished in compliance with or in reference to any of such agreements is false or misleading in any material respect; or

(e) Default on Indebtedness or Other Security. The Debtor or any Restricted Subsidiary fails to make any payment due on any Indebtedness or other Security or any event shall occur (other than the mere passage of time) or any condition shall exist in respect of any Indebtedness or other Security of the Debtor or any Restricted Subsidiary, or under any agreement securing or relating to such Indebtedness or other Security, the effect of

which is (i) to cause (or permit any holder of such Indebtedness or other Security or a trustee to cause) such Indebtedness or other Security, or a portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or (ii) to permit a trustee or the holder of any Security (other than common stock of the Debtor or any Restricted Subsidiary) to elect a majority of the directors on the Board of Directors of the Debtor or such Restricted Subsidiary; or

(f) Facilities Lease Default. An Event of Default as set forth in Section 15 of the Facilities Lease; or

(g) Equipment Lease Default. An Event of Default as set forth in Section 15 of the Equipment Lease; or

(h) Involuntary Bankruptcy Proceedings. A receiver, liquidator or trustee of the Debtor, or any Restricted Subsidiary, or of any of the Property of either, is appointed by court order and such order remains in effect for more than 30 days; or the Debtor, or any Restricted Subsidiary, is adjudicated bankrupt or insolvent; or any of the Property of either is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against the Debtor or any Restricted Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing; or

(i) Voluntary Petitions. The Debtor, or any Restricted Subsidiary, files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(j) Assignments for Benefit of Creditors, etc. The Debtor or a Restricted Subsidiary makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Debtor or a Restricted Subsidiary, or of all or any part of the Property of either; or

(k) Undischarged Final Judgments. Final judgment or judgments for the payment of money aggregating in excess of \$50,000 is or are outstanding against one or more of the Debtor and its Restricted Subsidiaries and any one of such judgments has been outstanding for more

than 30 days from the date of its entry and has not been discharged in full or stayed.

Section 7.2. Security Trustees' Rights. The Debtor agrees that when any Event of Default has occurred and is continuing, the Security Trustees shall, in addition to all other rights and remedies available at law or in equity, including, without limitation, any rights and remedies in respect of the real property constituting a part of the mortgaged property, have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the Uniform Commercial Code of Texas (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) and without limiting the foregoing may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative, shall be exercisable against all or any part of the mortgaged property and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Security Trustees may, and upon the written request of the holders of at least 25% in principal amount of the Notes then outstanding shall, by notice in writing to the Debtor, declare the entire unpaid balance of the Notes to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) Subject always to the existing rights, if any, of the Lessee under the Leases, the Security Trustees personally, or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to enter into and upon all or any part of the mortgaged property and to exclude the Debtor wholly therefrom, and having and holding the same may use, operate, manage and control the mortgaged property and conduct the business thereof and to collect and receive all earnings, revenues, rents, issues, proceeds and income of the mortgaged property and every part thereof and may maintain, repair and renew the mortgaged property and make replacements, alterations, additions and improvements thereto or remove and dispose of any portion of the mortgaged property and may otherwise exercise any and all of the rights and powers of the Debtor in respect thereof;

(c) Subject always to the then existing rights, if any, of the Lessee under the Leases, the Security Trustees may enforce this trust and sell as an entirety or in parcels, by one sale or by several sales, held at one



time or at different times, all as the Security Trustees acting may elect (all rights to a marshalling of the assets of the Debtor, including the mortgaged property herein conveyed, or to a sale in inverse order of alienation, being for the Debtor, its successors and assigns expressly and specifically hereby waived), the mortgaged property at the door of the County Courthouse in any County in which a part of the Land is situated, each such sale to be made on the first Tuesday of some month between the hours of 10 o'clock a.m. and 4 o'clock p.m. to the highest bidder for cash at public vendue, after the Security Trustees (or a Person or Persons selected by the Security Trustees) shall have given notices of the proposed sale in the manner hereinafter set forth, and to make due conveyance to the purchaser or purchasers, with general warranty of title to such purchaser or purchasers binding upon the Debtor, its successors and assigns. The Security Trustees (or a Person or Persons selected by the Security Trustees) shall give notice of each such proposed sale by posting written notice of the time, place and terms of sale for at least twenty-one (21) consecutive days preceding the date of the sale at the Courthouse door of the County in which the sale is to be made. Where the Land to be sold is situated in more than one County, one notice shall be posted at the Courthouse door of each County in which a part of the Land to be sold is situated, and such notices shall designate the County where such Land will be sold, which may be any County in which a part of said Land is situated. In addition to the foregoing notice or notices to be posted by the Security Trustees (or a Person or Persons selected by the Security Trustees), the Security Trustees shall, at least twenty-one (21) days preceding the date of sale, serve written notice of the proposed sale by certified mail on the Debtor according to the records of the Security Trustees. The service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to the Debtor at the most recent address as shown in Section 10.3 of this Indenture, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any Person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. In this respect and to the full extent it may legally do so, the Debtor also expressly covenants, stipulates and agrees that: (i) the address of the Debtor set out in Section 10.3 of this Indenture shall be deemed and considered conclusively to be and remain at all times the most recent address of the Debtor, provided such address may be changed from time to time only by express written notice of change thereof signed by the Debtor and actually delivered to and received by the Corporate Security Trustee and setting forth a new address which shall be deemed and considered conclusively to be and remain at all times thereafter the most recent address of the Debtor until changed

in the manner herein provided, (ii) the records of the Corporate Security Trustee shall not be deemed to reflect any change in the name or identity of the Debtor (to whom notice of a proposed sale shall be required to be mailed as provided for above) unless and until express written notice of such change signed by the Debtor shall have been actually delivered to and received by the Corporate Security Trustee, and (iii) no notice of such sale or sales other than the notices hereinabove provided shall be required to be given to the Debtor or any other Persons and any other notice is expressly waived. At any sale conducted under this Indenture, credit upon all or any part of the Indebtedness Hereby Secured shall be deemed cash paid for the purpose of this paragraph. The holder of all or any part of the Indebtedness Hereby Secured may purchase at any such sale. The provisions hereof with respect to posting and giving notices of sale are intended to comply with the provisions of Article 3810 of the Texas Revised Civil Statutes as in force and effect on January 1, 1976, and in the event the requirement for any notice under such Article 3810 shall be eliminated or the prescribed manner of giving same is modified by future amendment to such Article 3810, the requirement for such particular notice shall be stricken from or modified in this instrument in conformity with such amendment. The manner herein prescribed for serving or giving any notice, other than that to be posted or caused to be posted by the Security Trustees, shall not be deemed exclusive but such notice or notices may be given in any other manner which may be permitted by applicable law.

The Debtor specifically covenants and stipulates that: (w) the recitals in the conveyance made to the purchaser, either by the Security Trustees or any successor or substitute Security Trustees shall be full proof and evidence of the matters therein stated, (x) no other proof shall be requisite of the request by the holder or holders of the Notes on the Security Trustees or any successor or substitute Security Trustees to enforce this trust, or of the due, timely and proper posting and serving of all notices and making of the sale, or any particulars thereof, or of the inability, refusal or failure of the Security Trustees or any successor or substitute Security Trustees to act, or of the removal of the Security Trustees or any successor or substitute Security Trustees, or the appointment of successor or substitute Security Trustees, as herein provided, either as to the legality of their appointment or otherwise, or of the contingencies which brought about the failure or inability of the Security Trustees or any successor or substitute Security Trustees to act, or of their removal, as the case may be, (y) all prerequisites of said sale shall be presumed to have been performed, and (z) the sale made under the powers herein granted shall be a perpetual bar against the Debtor, its successors and assigns. The right of sale hereunder shall

not be exhausted by one or any sale, but so long as any of the Indebtedness Hereby Secured remains unpaid, the Security Trustees or successor or substitute Security Trustees may make other and successive sales until all the mortgaged property shall be legally sold;

(d) Subject always to the then existing rights, if any, of the Lessee under the Leases, the Security Trustees may proceed to protect and enforce this Indenture and the Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the mortgaged property or any part thereof, or for the recovery of judgment for the Indebtedness Hereby Secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law; and

(e) Subject always to the then existing rights, if any, of the Lessee under the Leases and the Assignment, the Security Trustees may proceed to exercise all rights, privileges and remedies of the Debtor under the Leases and the Assignment, and may exercise all such rights and remedies either in the name of the Security Trustees or in the name of the Debtor for the use and benefit of the Security Trustees.

Section 7.3. Acceleration Clause. In case of any sale of the mortgaged property, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Indenture, the principal of the Notes, if not previously due, and the interest accrued thereon and all other sums required to be paid by the Debtor pursuant to this Indenture, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use any Note or Notes and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Notes including principal and interest thereof out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash.

Section 7.4. Waiver by Debtor. To the extent now or at any time hereafter enforceable under applicable law, the Debtor covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or

appraisement of the mortgaged property or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of the Debtor acquiring any interest in or title to the mortgaged property or any part thereof subsequent to the date of this Indenture, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Security Trustees, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Section 7.5. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all Persons claiming the Property sold or any part thereof under, by or through the Debtor, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Leases).

Section 7.6. Application of Sale and Other Proceeds. The purchase money proceeds and/or avails of any sale of the mortgaged property, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

First to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and attorneys' fees, incurred or made hereunder by the Security Trustees, or the holder or holders of the Notes and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

Second to the payment of the whole amount then due, owing and unpaid upon the Notes for principal, interest and premium, if any; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then ratably according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, with application on each Note to be made, first, to the unpaid principal thereof, second, to unpaid premium, if any, thereon, and third, to unpaid interest thereon;

such application to be made upon presentation of the several Notes, and the notation thereon of the payment, if partially paid, or the surrender and cancellation thereof, if fully paid; and

Third to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 7.7. Discontinuance of Remedies. In case the Security Trustees shall have proceeded to enforce any right under this Indenture by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case the Debtor, the Security Trustees and the holders of the Notes shall be restored to their former positions and rights hereunder with respect to the property subject to the lien and security interest created under this Indenture.

Section 7.8. Cumulative Remedies. No delay or omission of the Security Trustees or of the holder of any Note to exercise any right or power arising from any default, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Security Trustees or the holder of any Note of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided therein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the Indebtedness Hereby Secured operate to prejudice, waive or affect the security of this Indenture or any rights, powers or remedies hereunder, nor shall the Security Trustees or the holder of any Note be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

## SECTION 8. THE SECURITY TRUSTEES.

The Security Trustees accept the trusts hereunder and agree to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Debtor and the respective holders of the Notes at any time outstanding by their acceptance thereof agree:

Section 8.1. Duties of Security Trustees. The Security Trustees undertake (a) except while an Event of Default actually known to the Security Trustees shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Indenture, and (b) while an Event of Default actually known to the Security Trustees shall have occurred and be

continuing, to exercise such of the rights and powers as are vested in them by this Indenture and to use the same degree of care and skill in their exercise as a prudent trustee would exercise or use under the circumstances in the conduct of his own affairs.

The Corporate Security Trustee upon receipt of instruments furnished to the Security Trustees pursuant to the provisions of this Indenture, shall examine the same to determine whether or not such instruments conform to the requirements of this Indenture.

Section 8.2. Security Trustees' Liability. No provision of this Indenture shall be construed to relieve the Security Trustees from liability for their own negligent action, negligent failure to act, or their own willful misconduct, except that:

(a) Unless an Event of Default actually known to the Security Trustees shall have occurred and be continuing, the Security Trustees shall not be liable except for the performance of such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Security Trustees but the duties and obligations of the Security Trustees shall be determined solely by the express provisions of this Indenture;

(b) In the absence of bad faith on the part of the Security Trustees, the Security Trustees may rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon, any resolution, Officer's Certificate, opinion of counsel, Note, request, notice, consent, waiver, order, signature guaranty, notarial seal, stamp, acknowledgment, verification, appraisal, report, stock certificate or other paper or document believed by the Corporate Security Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties;

(c) In the absence of bad faith on the part of the Security Trustees, whenever the Security Trustees or any of their agents, representatives, experts or counsel shall consider it necessary or desirable that any matter be proved or established, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officers' Certificate; provided, however, that the Security Trustees or such agent, representative, expert or counsel may require such further and additional evidence and make such further investigation as they may consider reasonable;

(d) The Security Trustees may consult with counsel, but solely as to legal matters, and the advice or opinion of such counsel as to such legal matters shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith and in accordance with such advice or opinion of counsel;

(e) The Security Trustees shall not be liable with respect to any action taken or omitted to be taken by them in good faith in accordance with any direction or request of the holders of the Notes;

(f) The Security Trustees shall not be liable for any error of judgment made in good faith by an officer of the Corporate Security Trustee unless it shall be proved that the Corporate Security Trustee was negligent in ascertaining the pertinent facts;

(g) The Security Trustees shall not be deemed to have knowledge of any Default or Event of Default unless and until an officer of the Trust Department of the Corporate Security Trustee who customarily handles corporate trusts shall have actual knowledge thereof or the Corporate Security Trustee shall have received written advice thereof from the holder of any Note or from the Debtor pursuant to the provisions of Section 3.9 hereof;

(h) Whether or not an Event of Default shall have occurred, the Security Trustees shall not be under any obligation to take any action under this Indenture which may tend to involve them in any expense or liability, the payment of which within a reasonable time is not, in their reasonable opinion, assured to them by the security afforded to them by the terms of this Indenture, unless and until it is requested in writing so to do by one or more holders of Notes outstanding hereunder and furnished, from time to time as they may require, with reasonable security and indemnity; and

(i) Whether or not an Event of Default shall have occurred, whenever it is provided in this Indenture that the Security Trustees consent to any act or omission by any Person or that the Security Trustees exercise their discretion in any manner, the Security Trustees may (but need not) seek the written acquiescence of the holders of at least 66-2/3% in principal amount of the Notes then outstanding and, unless written evidence of such acquiescence has been received by the Security Trustees, they shall be fully justified in refusing so to consent or so to exercise their discretion, provided, however, holders of 66-2/3% in principal

amount of the Notes from time to time outstanding shall have the right, upon furnishing to the Security Trustees such indemnification as the Security Trustees shall reasonably request, by an instrument in writing delivered to the Security Trustees, to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Indenture for the enforcement thereof or of the Notes; provided further, however, that the Security Trustees shall have the right to decline to follow any such direction if the Security Trustees shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to holders of Notes not parties to such direction.

Section 8.3. No Responsibility of Security Trustees for Recitals. The recitals and statements contained herein and in the Notes shall be taken as the recitals and statements of the Debtor and the Security Trustees assume no responsibility for the correctness of the same, nor shall the Security Trustees have any responsibility for or any liability with respect to any disclosure, warranty, representation or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Notes by the Debtor or by any other Person.

The Security Trustees make no representation as to the validity or sufficiency of this Indenture, or of the Notes secured hereby, the security hereby or thereby afforded, the title of the Debtor to the mortgaged property or the descriptions thereof, or the filing or recording or registering of this Indenture or any other document.

The Security Trustees shall not be concerned with or accountable to anyone for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Indenture or of any Property or Securities or the proceeds thereof which shall be released from the lien hereof in accordance with the provisions of this Indenture.

Section 8.4. Compensation and Expenses of Security Trustees; Indemnification; Lien Therefor. The Debtor covenants to pay to the Security Trustees such compensation for their services hereunder as shall be agreed to by the Debtor and the Security Trustees or, in the absence of such agreement, reasonable compensation therefor (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and to pay, or reimburse, the Security Trustees for all reasonable expenses incurred hereunder, including the reasonable compensation, expenses and disbursements of such agents, representatives, experts and counsel as the Security Trustees may employ in connection with the exercise and performance of their powers and duties hereunder.



The Debtor will also indemnify and save the Security Trustees harmless against any liabilities, not arising from the Security Trustees' own default or negligence or bad faith, which they may incur in the exercise and performance of their rights, powers, trusts, duties and obligations hereunder.

As security for such compensation, expenses, disbursements and indemnification, the Security Trustees shall have the benefit of the lien hereby created in priority to the indebtedness evidenced by the Notes issued hereunder.

Section 8.5. Status of Moneys Received. All moneys received by the Corporate Security Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law, and may be deposited by the Corporate Security Trustee under such general conditions as may be prescribed by law in the Corporate Security Trustee's general banking department, and the Corporate Security Trustee shall be under no liability for interest on any moneys received by it hereunder. The Corporate Security Trustee and any affiliated corporation may become the owner of any Note secured hereby and be interested in any financial transaction with the Debtor or any affiliated corporation, or the Corporate Security Trustee may act as depositary or otherwise in respect to other securities of the Debtor or any affiliated corporation, all with the same rights which it would have if not the Corporate Security Trustee.

Section 8.6. Action by the Individual Security Trustee. Subject to the provisions of Section 8.17 and to the proviso hereto, all rights, powers, duties and obligations conferred or imposed upon the Security Trustees shall be exercised and performed by the Corporate Security Trustee, provided that with the prior written consent and direction of the Corporate Security Trustee, the Individual Security Trustee may exercise any of such rights, powers, duties and obligations and any reference to the right of the Security Trustees to exercise the same shall mean and include the Individual Security Trustee as and upon the terms contemplated in this Section 8.6.

Section 8.7. Resignation of Corporate Security Trustee. The Corporate Security Trustee may resign and be discharged from the trusts created hereby by delivering notice thereof, by first class mail, postage prepaid, to the Debtor and all holders of the Notes at the time outstanding, specifying a date (not earlier than 60 days after the date of such notice) when such resignation shall take effect.

Such resignation shall take effect on the day specified in such notice, unless previously a successor Corporate Security Trustee shall have been appointed as provided in Section 8.9 hereof, in which event such resignation shall take effect immediately upon the appointment of such successor Corporate Security Trustee.

Section 8.8. Removal of Corporate Security Trustee. The Corporate Security Trustee may be removed at any time, for or without cause, by an instrument or instruments in writing executed by the holders of a majority in aggregate principal amount of the Notes at the time outstanding and delivered to the Corporate Security Trustee with a copy to the Debtor, specifying the removal and the date when it shall take effect.

Section 8.9. Appointment of Successor Corporate Security Trustee. In case at any time the Corporate Security Trustee shall resign or be removed or become incapable of acting, a successor Corporate Security Trustee may be appointed by the holders of a majority in aggregate principal amount of the Notes at the time outstanding, by an instrument or instruments in writing executed by such Noteholders and filed with such successor Corporate Security Trustee.

Until a successor Corporate Security Trustee shall be so appointed by the Noteholders, the Debtor shall appoint a successor Corporate Security Trustee to fill such vacancy, by an instrument in writing executed by the Debtor and delivered to the successor Corporate Security Trustee. If all or substantially all of the mortgaged property shall be in the possession of one or more receivers, trustees, liquidators or assignees for the benefit of creditors, then such receivers, trustees, custodians, liquidators or assignees may, by an instrument in writing delivered to the successor Corporate Security Trustee, appoint a successor Corporate Security Trustee. Promptly after any such appointment, the Debtor, or any such receivers, trustees, custodians, liquidators or assignees, as the case may be, shall give notice thereof by first class mail, postage prepaid, to each holder of the Notes at the time outstanding.

Any successor Corporate Security Trustee so appointed by the Debtor, or such receivers, trustees, custodians, liquidators or assignees, shall immediately and without further act be superseded by a successor Corporate Security Trustee appointed by the holders of a majority in aggregate principal amount of the Notes then outstanding.

If a successor Corporate Security Trustee shall not be appointed pursuant to this Section within sixty days after a vacancy shall have occurred in the office of the Corporate Security Trustee, the holder of any Note or such retiring Corporate Security Trustee (unless the retiring Corporate Security Trustee is being removed) may apply to any court of competent jurisdiction to appoint a successor Corporate Security Trustee, and such court may thereupon, after such notice, if any, as it may consider proper, appoint a successor Corporate Security Trustee.

Section 8.10. Succession of Successor Corporate Security Trustee. Any successor Corporate Security Trustee appointed hereunder shall execute, acknowledge and deliver to the Debtor and the predecessor Corporate Security Trustee an instrument accepting such appointment, and thereupon such successor Corporate Security Trustee,

without any further act, deed, conveyance or transfer, shall become vested with the title to the mortgaged property, and with all the rights, powers, trusts, duties and obligations of the predecessor Corporate Security Trustee in the trust hereunder, with like effect as if originally named as Corporate Security Trustee herein.

Upon the request of any such successor Corporate Security Trustee, however, the Debtor and the predecessor Corporate Security Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Corporate Security Trustee the title to the mortgaged property and all such rights, powers, trusts, duties and obligations of the predecessor Corporate Security Trustee hereunder, and the predecessor Corporate Security Trustee shall also assign and deliver to the successor Corporate Security Trustee any Property subject to the lien of this Indenture which may then be in its possession.

Any Corporate Security Trustee which has resigned or been removed shall nevertheless retain any lien upon the mortgaged property afforded to it by Section 8.4 hereof.

Section 8.11. Eligibility of Corporate Security Trustee. The Corporate Security Trustee shall be a state or national bank or trust company in good standing, organized under the laws of the United States of America or of the State of Illinois, Texas or Pennsylvania, and having its principal office in the City of Chicago, Dallas or Pittsburgh, having a capital, surplus and undivided profits aggregating at least \$50,000,000, if there be such a bank or trust company willing and able to accept such trust upon reasonable and customary terms.

In case the Corporate Security Trustee shall cease to be eligible in accordance with the provisions of this Section, the Corporate Security Trustee shall resign immediately in the manner and with the effect specified in Section 8.7 hereof.

Section 8.12. Successor Corporate Security Trustee by Merger. Any corporation into which the Corporate Security Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Corporate Security Trustee shall be a party, or any state or national bank or trust company in any manner succeeding to the corporate trust business of the Corporate Security Trustee as a whole or substantially as a whole, if eligible as provided in Section 8.11 hereof, shall be the successor of the Corporate Security Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything to the contrary contained herein notwithstanding.

Section 8.13. Resignation of the Individual Security Trustee. The Individual Security Trustee or any of his successors may resign and may be discharged of the trust created by this Indenture by giving notice thereof by first class mail, postage prepaid, to the Debtor and the Corporate Security Trustee specifying the date (not earlier than 60 days after the date of such notice) when such resignation shall take effect.

Such resignation shall take effect on the date so specified unless previously a person succeeding to the office of Individual Security Trustee shall have been appointed by the Corporate Security Trustee or by the holders of a majority in principal amount then outstanding of the Notes as provided in Section 8.15 hereof in which event such resignation shall take effect immediately upon the appointment of such person succeeding to the office of Individual Security Trustee.

Section 8.14. Removal of the Individual Security Trustee. The Individual Security Trustee or any of his successors may be removed at any time by the holders of a majority in aggregate principal amount of the Notes at the time outstanding or by the Corporate Security Trustee, by delivery of a notice of such removal to the Individual Security Trustee, to the Debtor, and in the case of removal by such holders, to the Corporate Security Trustee, signed by such holders or the Corporate Security Trustee, as the case may be.

Section 8.15. Appointment of Successor to the Individual Security Trustee. If at any time the individual Security Trustee or any of his successors shall die, resign or be removed or otherwise become incapable of acting, or if for any reason the office of Individual Security Trustee shall become vacant, a successor to the Individual Security Trustee shall forthwith be appointed by the Corporate Security Trustee or, in the event that the Corporate Security Trustee shall fail to make such appointment within 60 days after the occurrence of such death, resignation, removal, incapacity or vacancy, by the holders of a majority in aggregate principal amount of the Notes at the time outstanding by an instrument signed by the Corporate Security Trustee or by such holders.

Section 8.16. Succession of Successor to the Individual Security Trustee. Any person appointed as a successor to the Individual Security Trustee shall execute, acknowledge and deliver to his predecessor, to the Corporate Security Trustee and to the Debtor, an instrument accepting such appointment hereunder, and thereupon such person without any further act, deed or conveyance shall become vested with all the estates, properties, rights, powers, duties and trusts of his predecessor in the trusts hereunder with like effect as if originally named as Individual Security Trustee herein; but nevertheless, on the written request of the Debtor or of the Corporate Security Trustee or of the Individual Security Trustee, the predecessor shall execute and deliver an instrument transferring to the Individual Security Trustee, upon the trusts expressed in this Indenture, all the estates, properties, rights, powers and trusts granted to him by this Indenture and shall duly assign, transfer, deliver and pay over to the Individual Security Trustee any property and money subject to this Indenture held by such predecessor. Should any instrument in writing from the Debtor or from the Corporate Security Trustee be required by any person who becomes the Individual Security Trustee for more

fully and certainly vesting in and confirming to such Individual Security Trustee such estates, properties, rights, powers and trusts, then, on request, any and all such instruments in writing shall be made, executed, acknowledged and delivered by the Debtor and/or the Corporate Security Trustee.

Section 8.17. Co-Trustees. At any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the mortgaged property may at the time be located, the Debtor and the Corporate Security Trustee jointly shall have power and shall execute and deliver all instruments, to appoint one or more persons approved by the Corporate Security Trustee, to act as co-trustee, or co-trustees, jointly with the Corporate Security Trustee, or separate trustee or separate trustees, of all or any part of the mortgaged property, and to vest in such person or persons, in such capacity, such title to the mortgaged property or any part thereof, and such rights, powers, duties, trusts or obligations as the Debtor and the Corporate Security Trustee may consider necessary or desirable. If the Debtor shall not have joined in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default referred to in Section 7 hereof shall have occurred and be continuing, the Corporate Security Trustee alone shall have the power to make such appointment.

## SECTION 9. SUPPLEMENTAL INDENTURES; WAIVERS.

Section 9.1. Supplemental Indentures Without Noteholder Consent. The Debtor and the Security Trustees from time to time and at any time, subject to the restrictions in this Indenture contained, may enter into an indenture or indentures supplemental hereto and which thereafter shall form a part hereof for any one or more or all of the following purposes:

(a) To add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Debtor;

(b) To subject to the lien of this Indenture additional Property hereafter acquired by the Debtor and intended to be subjected to the lien of this Indenture and to correct and amplify the description of any property subject to the lien of this Indenture;

(c) To permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, except that nothing herein contained shall permit or authorize the inclusion of the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939 or any corresponding provision in any similar Federal statute hereafter in effect; or

(d) For any other purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or cure, correct or supplement any defect or inconsistent provisions of this Indenture or any supplement;

and the Debtor covenants to perform all requirements of any such supplemental indenture. No restriction or obligation imposed upon the Debtor may, except as otherwise provided in this Indenture, be waived or modified by such supplemental indentures, or otherwise.

Section 9.2. Waivers and Consents by Noteholders; Supplemental Indentures With Noteholders' Consent. Upon the waiver or consent of the holders of at least 66-2/3% in aggregate principal amount of the Notes (a) the Debtor may take any action prohibited, or omit the taking of any action required, by any of the provisions of this Indenture or any indenture supplemental hereto, or (b) the Debtor and the Security Trustees may enter into an indenture or indentures supplemental hereto for the purpose of adding, changing or eliminating any provisions of this Indenture or of any indenture supplemental hereto or modifying in any manner the rights and obligations of the holders of the Notes and the Debtor; provided, that no such waiver or supplemental indenture shall (i) impair or affect the right of any holder to receive payments or prepayments of the principal of and payments of the interest and premium, if any, on its Note, as therein and herein provided, without the consent of such holder, (ii) permit the creation of any Lien with respect to any of the mortgaged property, without the consent of the holders of all the Notes at the time outstanding, (iii) effect the deprivation of the holder of any Note of the benefit of the lien of this Indenture upon all or any part of the mortgaged property without the consent of such holder, (iv) reduce the aforesaid percentage of the aggregate principal amount of Notes, the holders of which are required to consent to any such waiver or supplemental indenture pursuant to this Section, without the consent of the holders of all of the Notes at the time outstanding, or (v) modify the rights, duties or immunities of the Security Trustees without the consent of the holders of all of the Notes at the time outstanding.

Section 9.3. Notice of Supplemental Indentures. Promptly after the execution by the Debtor and the Security Trustees of any supplemental indenture or agreement pursuant to the provisions of Section 9.1 or 9.2 hereof, the Corporate Security Trustee shall give written notice, setting forth in general terms the substance of such supplemental indenture, together with a conformed copy thereof, mailed first-class postage prepaid, to each holder of the Notes at its address set forth in the Register. Any failure of the Corporate Security Trustee to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or agreement.

Section 9.4. Opinion of Counsel Conclusive as to Supplemental Indentures. The Security Trustees are hereby authorized to join with the Debtor in the execution of any such supplemental

indenture authorized or permitted by the terms of this Indenture and to make the further agreements and stipulations which may be therein contained, and the Security Trustees may receive an opinion of counsel selected by the Corporate Security Trustee (which may be counsel for the Lessee or the Debtor) as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Section 9 complies with the requirements of this Section 9.

#### SECTION 10. MISCELLANEOUS.

Section 10.1. Successors and Assigns. Whenever any of the parties is referred to such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Indenture contained by or on behalf of the Debtor or by or on behalf of the Security Trustees shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

Section 10.2. Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Indenture shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 10.3. Communications. All communications provided for herein shall be in writing. Communications to the Debtor or the Security Trustees shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when addressed and delivered as follows:

If to the Debtor: Swindell-Dressler Leasing Company  
c/o Pullman Incorporated  
200 South Michigan Avenue  
Chicago, Illinois 60604

Attention: Treasurer

If to the Corporate Security Trustee  
or the Individual Security Trustee: Harris Trust and Savings Bank  
111 West Monroe Street  
Chicago, Illinois 60690

Attention: Indenture Trust Division

or to the Debtor or the Security Trustees at such other address as the Debtor or the Security Trustees may designate by notice duly given in accordance with this Section to the other party. Communications to the holder of a Note shall be deemed to have been given (unless otherwise provided for by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed to such holder at its address set forth in the Register. Communications to the Lessee shall be deemed to have been given (unless otherwise provided by the specific provisions hereof in

respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed to Swindell-Dressler Energy Supply Company, Ten Broadway Building, Salt Lake City, Utah 84101, Attention: Mr. I. S. Huff, President, or to the Lessee at such other address as the Lessee may designate by notice duly given in accordance with this Section to the Debtor and the Security Trustees.

Section 10.4. Release. The Security Trustees shall release this Indenture and the lien and security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all Indebtedness Hereby Secured has been fully paid or discharged.

Section 10.5. Counterparts. This Indenture may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture.

Section 10.6. Governing Law. This Indenture and the Notes shall be construed in accordance with and governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act with respect to the Equipment and the Equipment Lease.

Section 10.7. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Debtor has caused this Indenture to be executed, and Harris Trust and Savings Bank, in evidence of its acceptance of the Trusts hereby created, has caused this Indenture to be executed on its behalf by one of its Vice Presidents and its corporate seal to be hereunto affixed, and said seal and this Indenture



to be attested by one of its Assistant Secretaries, and R. G. Mason, in token of his acceptance of the Trusts hereby created, has hereunto set his hand all as of the day and year first above written.

SWINDELL-DRESSLER LEASING COMPANY

[SEAL]

ATTEST:

William O. Edridge  
WILLIAM O. EDRIDGE  
Its ASSISTANT SECRETARY

By [Signature]  
Its Wesley W. Foster  
VICE PRESIDENT

DEBTOR

HARRIS TRUST AND SAVINGS BANK

[SEAL]

ATTEST:

A. H. Davis  
A. H. DAVIS  
Its Assistant Secretary

By [Signature]  
J. L. SPRENG  
Its Vice President

CORPORATE SECURITY TRUSTEE

[Signature]  
R. G. Mason

INDIVIDUAL SECURITY TRUSTEE

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

BEFORE ME, the undersigned authority, on this day personally appeared NICOLE W. FOSTER, VICE PRESIDENT known to me to be the person whose name is subscribed to the foregoing instrument, and she acknowledged to me that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office, this 14<sup>th</sup> day of April, A.D. 1978.

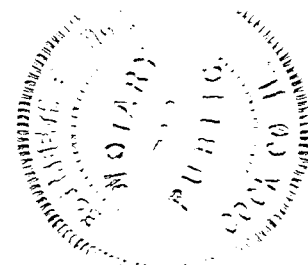
Elizabeth B. Nowak  
Notary Public in and for  
Cook County, Illinois

My Commission Expires:

NOTARY PUBLIC STATE OF ILLINOIS

MY COMMISSION EXPIRES JUNE 30 1981

ISSUED THRU ILLINOIS NOTARY ASSOC.



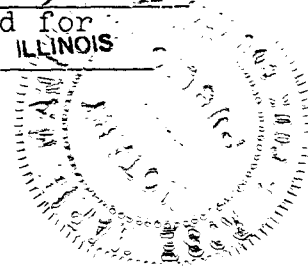
STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

BEFORE ME, the undersigned authority, on this day personally appeared J. L. SPRENG, VICE PRESIDENT, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN under my hand and seal of office, this 14<sup>th</sup> day of April, A.D. 1978.

Carol Marie Mann  
Notary Public in and for  
Cook County, ILLINOIS

My Commission Expires:  
My Commission expires February 19, 1979



STATE OF ILLINOIS )  
                          ) ss.  
COUNTY OF COOK     )

BEFORE ME, the undersigned authority, on this day personally appeared R. G. MASON, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated.

GIVEN under my hand and seal of office, this 14th day of April, A.D. 1978.

Ros Marie Manly

Notary Public in and for  
COOK County, ILLINOIS

My Commission Expires:

My Commission expires February 19, 1979



DESCRIPTION OF LAND AND RIGHTS, LICENSES  
AND EASEMENTS PERTAINING THERETO

Description of Land

That certain land and premises situate in Potter County, Texas, and more particularly described as follows:

beginning at a point 1050.00 feet North and 2000.00 feet West of the Southeast corner of Section 98 of Block 2, AB&M survey;  
thence West 725.00 feet;  
thence North 58° 48' West 1,097.00 feet;  
thence North 31° 12' East 1,200.00 feet;  
thence North 78° 34' 30" East 576.87 feet;  
thence South 58° 16' 18" East 207.23 feet to the Northwest corner of existing SPS fence;  
thence South 630.00 feet;  
thence South 53° 45' East 372.02 feet;  
thence South 750.00 feet to beginning point, containing 43.62 acres, SAVE AND EXCEPT all oils, gas and other minerals.

Description of Easements

That certain Easement and Right-of-Way dated as of December 29, 1975 from Southwestern Public Service Company to Swindell-Dressler Leasing Company filed for record with the County Clerk of Potter County, Texas at Vol. 1262 Page 1 of the Deed Records of Potter County, Texas.

That certain Easement and Right-of-Way dated as of December 29, 1975 from Southwestern Public Service Company to Swindell-Dressler Leasing Company filed for record with the County Clerk of Potter County, Texas at Vol. 1262 Page 5 of the Deed Records of Potter County, Texas.

That certain Easement and Right-of-Way dated as of December 29, 1975 from Southwestern Public Service Company to Swindell-Dressler Leasing Company filed for record with the County Clerk of Potter County, Texas at Vol. 1262 Page 10 of the Deed Records of Potter County, Texas.

EXHIBIT A  
(to Indenture of Mortgage, Assignment  
of Lease and Security Agreement)

DESCRIPTION OF EQUIPMENT

<u>Manufacturer</u>	<u>Type of Car</u>	<u>Specification</u>	<u>Number of Cars</u>	<u>Car Numbers</u>	<u>Delivery</u>
Ortner Freight Car Company	3850 cu. ft. capacity coal "Rapid Discharge" coal hopper rail-road cars	Ortner Freight Car Company No. OCN 1130 10-73 dated October 1, 1973 and supplement #1 dated February 5, 1974	128	SDEX 10001 to SDEX 10032, both inclusive; SDEX 10034 to SDEX 10097, both inclusive; and SDEX 10099 to SDEX 10130, both inclusive	October 1, 1975 Gillette, Wyoming
Ortner Freight Car Company	3850 cu. ft. capacity coal "Rapid Discharge" coal hopper rail-road cars	Ortner Freight Car Company No. OC 586	112	SDEX 10261 to SDEX 10372, both inclusive	August 30, 1978 Gillette, Wyoming
Pullman Incorporated (Pullman-Standard Division)	100-ton capacity quadruple open top, double automatic discharge door "Standard T-16" coal hopper rail-road cars	Pullman Incorporated (Pullman-Standard Division) No. 3628	130	SDEX 10131 to SDEX 10260, both inclusive	August 30, 1978 Gillette, Wyoming

EXHIBIT B  
(to Indenture of Mortgage, Assignment  
of Lease and Security Agreement)

## DESCRIPTION AND LOCATION OF FACILITY

The coal handling facility comprised of the following components:

- Facility Flow
- Unloading Facility
- Unloading Structure
- Wayside Rail
- Reclaim Facility
- Vibrating Pile Discharger
- Vibrating Feeders
- Belt Conveyors 222 and 231
- Belt Conveyors 240 and 250
- Two Ton Hoist
- Crushing Facility
- Tramp Iron Magnets
- Five Ton Hoist
- Crushers
- Power Plant Supply
- Conveyor Scale System
- Two Ton Hoists
- Power Plant Supply Conveyors
- Transfer House Chutework
- Bunker Feed (Fixed Tripper) Conveyor
- Ancillary Systems
- Thaw System
- Wet Spray Dust Suppression
- Baghouse Dust Collection Systems
- Vacuum Cleanup System
- Fire Suppression System
- Electrical Systems
- Power Distribution
- Control Systems
- Communication System
- Fire Detection System
- Office, maintenance and warehouse building

The above described coal handling facility is located on that certain land and premises situated in Potter County, Texas, and more particularly described as follows:

beginning at a point 1050.00 feet North and 2000.00 feet West of the Southeast corner of Section 98 of Block 2, AB&M survey;

EXHIBIT C  
(to Indenture of Mortgage, Assignment  
of Lease and Security Agreement)

thence West 725.00 feet;  
thence North  $58^{\circ} 48'$  West 1,097.00 feet;  
thence North  $31^{\circ} 12'$  East 1,200.00 feet;  
thence North  $78^{\circ} 34' 30''$  East 576.87  
feet;  
thence South  $58^{\circ} 16' 18''$  East 207.23  
feet to the Northwest corner of existing  
SPS fence;  
thence South 630.00 feet;  
thence South  $53^{\circ} 45'$  East 372.02 feet;  
thence South 750.00 feet to beginning  
point, containing 43.62 acres, SAVE AND  
EXCEPT all oils, gas and other minerals.

SWINDELL-DRESSLER LEASING COMPANY

Interim Note due September 30, 1978

\$11,542,000

\_\_\_\_\_, 1978

FOR VALUE RECEIVED, the undersigned, Swindell-Dressler Leasing Company, a Delaware corporation, hereby promises to pay to the order of TEXAS COMMERCE BANK NATIONAL ASSOCIATION (the "Bank") the principal sum of ELEVEN MILLION FIVE HUNDRED FORTY-TWO THOUSAND DOLLARS or the aggregate principal amount of Loans made pursuant to the Loan Agreement hereinafter mentioned and outstanding (as shown on the grid attached hereto) as of the maturity hereof, whether by acceleration or otherwise, whichever may be the lesser, on or before September 30, 1978, together with interest on any and all amounts remaining unpaid hereon from time to time from the date hereof until maturity payable on May 30, 1978, and August 31, 1978 and at maturity, and additionally payable with each prepayment of principal, all at a rate of 7-3/4% per annum (based on a year of 360 days of twelve 30-day months).

If any payment of principal or interest on this note shall become due on a Saturday, Sunday, or public holiday on which the Bank is not open for business, such payment shall be made on the next succeeding business day and such extension of time shall in such case be included in computing interest in connection with such payment.

All past due principal and interest on this note shall bear interest at a rate of 12% per annum.

Payments of both principal and interest are to be made in lawful money of the United States of America at the principal office of the corporate Security Trustee referred to below, or such other place as the holder shall designate in writing to the maker.

If default is made in the payment of this note and it is placed in the hands of an attorney for collection, or collected through probate or bankruptcy proceedings, or if suit is brought on this note, the maker agrees to pay reasonable attorneys' fees in addition to all other amounts

EXHIBIT D

(to Indenture of Mortgage, Assignment  
of Lease and Security Agreement)



owing hereunder. No provision of this note, the Loan Agreement, as the Indenture shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable law.

This note is the Interim Note provided for in the Loan Agreement dated as of February 1, 1978 between the maker and the Bank, which Loan Agreement, among other things, contains provisions for prepayments on account of principal hereof prior to the maturity hereof upon terms and conditions therein specified. This note is also issued under and entitled to the benefits of the Indenture of Mortgage, Assignment of Lease and Security Agreement dated as of February 1, 1978 (the "Indenture"), between the maker, as Debtor, and Harris Trust and Savings Bank and R. G. Mason, as Security Trustees, which Indenture, among other things, contains provisions for acceleration of the maturity hereof on the happening of certain stated events. This note is secured under the Indenture equally and ratably with the 9% Secured Notes provided for in the Indenture. It is contemplated that by reason of prepayments hereon there may be times when no indebtedness is owing hereunder; but notwithstanding such occurrences this note shall remain valid and shall be in full force and effect as to Loans made pursuant to said Loan Agreement subsequent to each such occurrence, and shall be secured by the Indenture as to such Loan.

The maker and any and all endorsers, guarantors and sureties severally waive grace, demand, presentment for payment, notice of dishonor or default, protest and notice of protest and diligence in collecting and bringing of suit against any party hereto, and agree to all renewals, extensions or partial payments hereon and to any release or substitution of security hereof, in whole or in part, with or without notice, before or after maturity.

SWINDELL-DRESSLER LEASING COMPANY

By \_\_\_\_\_, (Title)  
and \_\_\_\_\_, (Title)

### Application of Payments on Note of

[illegible]

SWINDELL-DRESSLER LEASING COMPANY

9% SECURED NOTE DUE 1979-1998

No. R-

\$

, 197

FOR VALUE RECEIVED, the undersigned, SWINDELL-DRESSLER LEASING COMPANY, a Delaware corporation (the "Company"), hereby promises to pay to

or registered assigns,

the principal sum of

DOLLARS (\$ )

together with interest from the date hereof until maturity on the principal balance from time to time remaining unpaid hereon at the rate of 9% per annum (computed on the basis of a 360-day year of twelve consecutive 30-day months) in installments as follows:

- (i) one (1) installment of interest only  
in the amount of \$ , payable  
on October 1, 1978;
- (ii) seventy-nine (79) installments, including  
both principal and interest, each in  
the amount of \$ \* , payable on  
January 1, 1979, and on the 1st day of  
each April, July, October and January  
thereafter, to and including July 1,  
1998;
- (iii) with a final installment on October 1,  
1998 in an amount equal to the entire  
principal and interest remaining unpaid  
as of said date.

The Company promises to pay interest at the rate of 10% per annum (to the extent legally enforceable) on each overdue installment of principal and (to the extent legally enforceable) upon each overdue installment of interest from and after the maturity of each such installment until paid.

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\* 2.706376% of the original principal amount of such Note.

EXHIBIT E  
(to Indenture of Mortgage, Assignment  
of Lease and Security Agreement)

All payments of principal of and interest on this Note shall be made at the principal office of Harris Trust and Savings Bank, the Corporate Security Trustee referred to below, in coin or currency of the United States of America which at the time of payment shall be legal tender for the payment of public and private debts.

This Note is one of the 9% Secured Notes due 1979-1998 not exceeding \$18,542,000 in aggregate principal amount (the "Notes"), issued or to be issued under and pursuant to those certain Note Agreements, dated as of February 1, 1978 (the "Note Agreements"), entered into by the Company with each of the Purchasers named therein, and is further issued under and equally and ratably with said other Notes secured by that certain Indenture of Mortgage, Assignment of Lease and Security Agreement, dated as of February 1, 1978 (the "Indenture"), from the Company to Harris Trust and Savings Bank (the "Corporate Security Trustee") and R. G. Mason (the "Individual Security Trustee") (said Corporate Security Trustee and Individual Security Trustee being hereinafter sometimes referred to collectively as the "Security Trustees").

This Note and the holder hereof are entitled, equally and ratably with the holders of all other Notes outstanding under the Indenture, to all of the benefits and security provided for by or referred to in the Note Agreements and the Indenture and all supplemental agreements executed pursuant to the Note Agreements or the Indenture, to which instruments a reference is hereby made for a statement thereof, including a description of the mortgaged property, the nature and extent of the security and the rights of the Security Trustees, the holder or holders of the Notes and of the Company in respect thereof.

This Note may be declared due prior to its expressed maturity date all in the events, on the terms and in the manner provided for in the Note Agreements and the Indenture. Certain prepayments are required to be made hereon on the terms and in the manner provided for in the Note Agreements and the Indenture.

The terms and provisions of the Indenture, the rights and obligations of the Company and the rights of the holders of the Notes may be changed and modified to the extent permitted by and as provided in the Note Agreements and the Indenture.

The Notes are issuable as either registered or unregistered Notes. This Note is a registered Note and on and subject to the conditions contained in the Indenture, is transferable by the registered holder hereof in person or by its duly authorized attorney on the Register (as defined in the Indenture) to be kept for that purpose at the principal office of the Company. On and subject to the conditions contained in the Indenture, this Note is exchangeable for Notes of other denominations.

This Note is governed and construed in accordance with Illinois law.

SWINDELL-DRESSLER LEASING COMPANY

By \_\_\_\_\_  
-2- Its

NOTICE: THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE. THE NOTE MAY BE OFFERED OR SOLD ONLY IF REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR IF AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

SWINDELL-DRESSLER LEASING COMPANY

9% SECURED NOTE DUE 1979-1998

No.

\$

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FOR VALUE RECEIVED, the undersigned, SWINDELL-DRESSLER LEASING COMPANY, a Delaware corporation (the "Company"), hereby promises to pay to

or order

the principal sum of

together with interest from the date hereof until maturity on the principal balance from time to time remaining unpaid hereon at the rate of 9% per annum (computed on the basis of a 360-day year of twelve consecutive 30-day months) in installments as follows:

- (i) one (1) installment of interest only in the amount of \$ , payable on October 1, 1978;
- (ii) seventy-nine (79) installments, including both principal and interest, each in the amount of \$ \* , payable on January 1, 1979, and on the 1st day of each April, July, October and January thereafter, to and including July 1, 1998;
- (iii) with a final installment on October 1, 1998 in an amount equal to the entire principal and interest remaining unpaid as of said date.

The Company promises to pay interest at the rate of 10% per annum (to the extent legally enforceable) on each overdue installment of principal and (to the extent legally enforceable) upon each overdue installment of interest from and after the maturity of each such installment until paid.

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\* 2.706376% of the original principal amount of such Note.

EXHIBIT F  
(to Indenture of Mortgage, Assignment  
of Lease and Security Agreement)

All payments of principal of and interest on this Note shall be made at the principal office of Harris Trust and Savings Bank, the Corporate Security Trustee referred to below, in coin or currency of the United States of America which at the time of payment shall be legal tender for the payment of public and private debts.

This Note is one of the 9% Secured Notes not exceeding \$18,542,000 in aggregate principal amount (the "Notes"), issued or to be issued under and pursuant to those certain Note Agreements, dated as of February 1, 1978 (the "Note Agreements"), entered into by the Company with each of the Purchasers named therein, and is further issued under and equally and ratably with said other Notes secured by that certain Indenture of Mortgage, Assignment of Lease and Security Agreement, dated as of February 1, 1978 (the "Indenture"), from the Company to Harris Trust and Savings Bank (the "Corporate Security Trustee") and R. G. Mason (the "Individual Security Trustee") (said Corporate Security Trustee and Individual Security Trustee being hereinafter sometimes referred to collectively as the "Security Trustees").

This Note and the holder hereof are entitled, equally and ratably with the holders of all other Notes outstanding under the Indenture, to all of the benefits and security provided for by or referred to in the Note Agreements and the Indenture and all supplemental agreements executed pursuant to the Note Agreements or the Indenture, to which instruments a reference is hereby made for a statement thereof, including a description of the mortgaged property, the nature and extent of the security and the rights of the Security Trustees, the holder or holders of the Notes and of the Company in respect thereof.

This Note may be declared due prior to its expressed maturity date all in the events, on the terms and in the manner provided for in the Note Agreements and the Indenture. Certain prepayments are required to be made hereon on the terms and in the manner provided for in the Note Agreements and the Indenture.

The terms and provisions of the Indenture, the rights and obligations of the Company and the rights of the holders of the Notes may be changed and modified to the extent permitted by and as provided in the Note Agreements and the Indenture.

The Notes are issuable as either registered or unregistered Notes. This Note is an unregistered Note and is transferable by endorsement and delivery. On and subject to the conditions contained in the Indenture, this Note is exchangeable for Notes of other denominations.

This Note is governed and construed in accordance with Illinois law.

SWINDELL-DRESSLER LEASING COMPANY

By \_\_\_\_\_  
Its

NOTICE: THIS NOTE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES LAWS OF ANY STATE. THE NOTE MAY BE OFFERED OR SOLD ONLY IF REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR IF AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.